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TENNESSEE ADMINISTRATIVE REGISTER



May 15, 2006
Volume 32, Number 5

RILEY C. DARNELL
Secretary of State

Division of Publications
8th Floor, Snodgrass-Tennessee Tower
312 8th Avenue North
Nashville TN 37243 - 0310

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PREFACE

The Tennessee Administrative Register (T.A.R.) is an official publication of the Tennessee Department of State. The T.A.R. is compiled and published monthly by the Department of State pursuant to *Tennessee Code Annotated, Title 4, Chapter 5*. The T.A.R. contains in their entirety or in summary form the following: (1) various announcements (e.g. the maximum effective rate of interest on home loans as set by the Department of Financial Institutions, formula rate of interest and notices of review cycles); (2) emergency rules; (3) proposed rules; (4) public necessity rules; (5) notices of rulemaking hearings and (6) proclamations of the Wildlife Resources Commission.

Emergency Rules are rules promulgated due to an immediate danger to the public health, safety or welfare. These rules are effective immediately on the date of filing and remain in effect thereafter for up to 165 days. Unless the rule is promulgated in some permanent form, it will expire after the 165-day period. The text or a summary of the emergency rule will be published in the next issue of the T.A.R. after the rule is filed. Thereafter, a list of emergency rules currently in effect will be published.

Proposed Rules are those rules the agency is promulgating in permanent form in the absence of a rulemaking hearing. Unless a rulemaking hearing is requested within 30 days of the date the proposed rule is published in the T.A.R., the rule will become effective 105 days after said publication date. All rules filed in one month will be published in the T.A.R. of the following month.

Public Necessity Rules are promulgated to delay the effective date of another rule that is not yet effective, to satisfy constitutional requirements or court orders, or to avoid loss of federal programs or funds. Upon filing, these rules are effective for a period of 165 days. The text or summary of the public necessity rule will be published in the next issue of the T.A.R. Thereafter, a list of public necessity rules currently in effect will be published.

Once a rule becomes effective, it is published in its entirety in the *official compilation-Rules and Regulations of the State of Tennessee*. Replacement pages for the compilation are published on a monthly basis as new rules or changes in existing rules become effective.

Wildlife Proclamations contain seasons, creel, size and bag limits, and areas open to hunting and/or fishing. They also establish wildlife and/or public hunting areas and declare the manner and means of taking. Since Wildlife Proclamations are published in their entirety in the T.A.R., they are not published in the *official compilation-Rules and Regulations of the State of Tennessee*.

Back Issues - Some back issues of the *Tennessee Administrative Register* are available. Please send \$ 1.50 per issue along with the volume, number and date you wish to order to the address in the back of this issue.

Copies of Rules from Back Issues of the *Tennessee Administrative Register* may be ordered from the Division of Publications for 25 cents per page with \$ 1.00 minimum. Back issues presently available start with the August, 1975 edition. The mailing address of the Division of Publications is shown on the order form in the back of each issue.

Reproduction - There are no restrictions on the reproduction of official documents appearing in the Tennessee Administrative Register.

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ANNOUNCEMENTS

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF FORMULA RATE OF INTEREST

Pursuant to the provisions of Chapter 464, Public Acts of 1983, the Commissioner of Financial Institutions hereby announces that the formula rate of interest is 11.75%.

This announcement is placed in the Tennessee Administrative Register for the purpose of information only and does not constitute a rule within the meaning of the Uniform Administrative Procedures Act.

Greg Gonzales

DEPARTMENT OF FINANCIAL INSTITUTIONS – 0180

ANNOUNCEMENT OF MAXIMUM EFFECTIVE RATE OF INTEREST

The Federal National Mortgage Association has discontinued its free market auction system for commitments to purchase conventional home mortgages. Therefore, the Commissioner of Financial Institutions hereby announces that the maximum effective rate of interest per annum for home loans as set by the General Assembly in 1987, Public Chapter 291, for the month of June 2006 2006 is 9.30 percent per annum.

The rate as set by the said law is an amount equal to four percentage points above the index of market yields of long-term government bonds adjusted to a thirty (30) year maturity by the U. S. Department of the Treasury. For the most recent weekly average statistical data available preceding the date of this announcement, the calculated rate is 5.30' percent.

Persons affected by the maximum effective rate of interest for home loans as set forth in this notice should consult legal counsel as to the effect of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221 as amended by P.L. 96-399) and regulations pursuant to that Act promulgated by the Federal Home Loan Bank Board. State usury laws as they relate to certain loans made after March 31, 1980, may be preempted by this Act.

Greg Gonzales

ANNOUNCEMENTS

DEPARTMENT OF FINANCIAL INSTITUTIONS - 0180 COMPLIANCE DIVISION

The Department of Financial Institutions hereby gives notice of withdrawal of Proposed Rule 0180-34 relative to Title Pledge Lenders – Recordkeeping and Business Practices, filed with the Department of State on the 29th day of March, 2006, to have become effective on the 28th day of July, 2006.

The notice of withdrawal of rules set out herein was properly filed in the Department of State on the 10th day of May, 2006.

ANNOUNCEMENTS

GOVERNMENT OPERATIONS COMMITTEES

ANNOUNCEMENT OF PUBLIC HEARINGS

For the date, time, and, location of this hearing of the Joint Operations committees, call 615-741-3642. The following rules were filed in the Secretary of State's office during the previous month. All persons who wish to testify at the hearings or who wish to submit written statements on information for inclusion in the staff report on the rules should promptly notify Fred Standbrook, Suite G-3, War Memorial Building, Nashville, TN 37243-0059, (615) 741-3072.

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-01	April 5, 2006	1200 Health Division of Health Related Boards	Proposed Rules	New Rule	<i>Chapter 1200-10-1</i> <i>General Rules and Regulations</i> 1200-10-1-.13 Screening Panels	Richard Russell Health OPGC 26th Fl Snodgrass/TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	August 28, 2006
04-02	April 5, 2006	0880 Medical Examiners Committee for Clinical Perfusionists	Rulemaking Hearing Rules	Amendments	<i>Chapter 0880-11</i> <i>General Rules and Regulations Governing the Practice of Clinical Perfusionists</i> 0880-11-.05 Licensure Process 0880-11-.14 Provisional Licenses	Robert J. Kraemer Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	June 19, 2006
04-03	April 5, 2006	0460 Dentistry	Rulemaking Hearing Rules	Amendments	<i>Chapter 0460-1</i> <i>General Rules</i> 0460-1-.03 Board Officers, Consultants, Records, and Meetings 0460-1-.06 Disciplinary Actions, Civil Penalties, Procedures, Declaratory Orders, Assessment of Costs, and Subpoenas 0460-1-.08 Dental Professional Corporations (D.P.C.), <i>Chapter 0460-2</i> <i>Rules Governing the Practice of Dentistry</i> 0460-2-.05 Examinations <i>Chapter 0460-3</i> <i>Rules Governing Practice of Dental Hygienists</i> 0460-3-.05 Examinations	Ernest Sykes Health OGC 26th Fl TN Twr 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	June 19, 2006
				Repeal	0460-1-.09 Dental Professional Limited Liability Companies (D.P.L.L.C.),		

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-04	April 6, 2006	1240 Human Services Child Support Guidelines	Rulemaking Hearing Rules	Repeals New Rules	<i>Chaper 1240-2-4</i> <i>Child Suport Guidelines</i> <i>Chaper 1240-2-4</i> <i>Child Suport Guidelines</i> 1240-2-4-.01 Legal Basis, Scope, and Purpose 1240-2-4-.02 Definitions 1240-2-4-.03 The Income Shares Model 1240-2-4-.04 Determination of Child Support 1240-2-4-.05 Modification of Child Support Orders 1240-2-4-.06 Retroactive Support 1240-2-4-.07 Deviations from the Child Support Guidelines 1240-2-4-.08 Worksheets and Instructions	Barbara Broersma Human Services 15th FI Citizen's Plaza Bldg 400 Deaderick St Nashville TN 37248-0006 615-313-4731	June 20, 2006
04-05	April 7, 2006	0780 Insurance	Public Necissity Rule	New Rules	<i>Chapter 0780-5-12</i> <i>Home Inspectors</i> 0780-5-12-.01 Purpose 0780-5-12-.02 Definitions 0780-5-12-.03 Application for License 0780-5-12-.04 Application Requirements 0780-5-12-.05 Renewal Requirements 0780-5-12-.06 Fees 0780-6-12-.07 Qualifying and Continuing Education 0780-5-12-.08 Citations 0780-5-12-.09 Civil Penalties 0780-5-12-.10 Standards of Practice 0780-5-12-.11 Code of Ethics	Christy A. Allen Commerce and Insurance OGC 500 James Robertson Pkwy Davy Crockett Twr 5th Fl Nashville TN 37243 (615) 741-3072	April 7, 2006 through Sept 19, 2006
04-06	April 10, 2006	0400 Environment and Conservation Division of Radiological Health	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-2-8</i> 1200-2-8-.03 Definitions 1200-2-8-.04 Equipment Control 1200-2-8-.05 Personal Radiation Safety Requirements for Radiographers and Radiographer's Assistants 1200-2-8-.12 Reporting Requirements 1200-2-8-.15 Recordkeeping Requirements	Alan Leiserson OGC L&C Twr 20th Fl 401 Church St Nashville TN 37243-1548 (615) 532-0131	June 24, 2006
04-07	April 11, 2006	1680 Transportation	Petition for Declaratory Order Notice of Hearing		the criteria for the erection and control of outdoor advertising Docket No. 22.01-090481J,	Petitioner's Name: William H. Thomas, Jr. Petitioner's Attorney: Irma Merrill Stratton 2121 One Commerce Sq Memphis TN 38103 (901) 526-6464	contested case hearing date: June 12, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-08	April 13, 2006	0400 Environment and Conservation Bureau of Environment Division of Air Pollution Control	Rulemaking Hearing Rules	Amendment	1200-3-26-.02 Construction And Annual Emission Fees	Mr. Ron Culberson Air Pollution Control 9th Fl L & C Annex 401 Church St Nashville TN 37243-1531 (615) 532-0554	June 27, 2006
04-09	April 13, 2006	1200 Health Bureau of Health Licensure and Regulation Emergency Medical Services	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-12-1 General Rules</i> 1200-12-1-.04 Emergency Medical Technician 1200-12-1-.18 Emergency Medical Dispatcher Standards	Juanita Presley OGC Health TN Twr 26th Fl 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	June 27, 2006
04-10	April 13, 2006	1200 Health Bureau of Health Licensure and Regulation Emergency Medical Services	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-12-1 General Rules</i> 1200-12-1-.04 Emergency Medical Technician 1200-12-1-.06 Schedule of Fees	Juanita Presley OGC Health TN Twr 26th Fl 312 8th Ave N Nashville TN 37247-0120 (615) 741-1611	June 27, 2006
04-11	April 16, 2007	0880 Medical Examiners	Rulemaking Hearing Rules	Amendments	<i>Chapter 0880-2 General Rules and Regulations Governing the Practice of Medicine</i> 0880-2-.14 Specially Regulated Areas and Aspects of Medical Practice 0880-2-.22 Free Health Clinic, Inactive Pro Bono and Volunteer Practice Requirements	Robert J. Kraemer OGC 26th Fl Twr 312 8th Ave N Nashville TN 37247-0120 615-741-1611	July 1, 2006
04-13	April 18, 2006	0400 Environment and Conservation Division of Radiological Health	Rulemaking Hearing Rules	Amendments	<i>Chapter 1200-2-5</i> 1200-2-5-.122 Disposal by Release into Sanitary Sewerage 1200-2-5-.161 Schedules	Alan Leiserson TDEC OGC L&C Twr 20th Fl 401 Church St Nashville TN 37243-0131 615-532-0125	July 2, 2006
04-15	April 16, 2006	0520 Education	Proposed Rule	Amendment	<i>Chapter 0520-1-3 Minimum Requirements for the Approval of Public Schools</i> 0520-1-3-.08 Pupil Personnel Services, Requirement G	Rich Haglund GC 9th Fl Johnson Twr 710 J Robertson Pkwy Nashville TN 37243-1050 615-253-5707	August 28, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-16	April 16, 2006	0520 Education	Proposed Rule	Amendment	<i>Chapter 0520-2-3 Teacher Education and Licensure</i> 0520-2-3-.21 Effective Dates	Rich Haglund GC 9th Fl Johnson Twr 710 J Robertson Pkwy Nashville TN 37243-1050 615-253-5707	August 28, 2006
04-17	April 16, 2006	0520 Education	Proposed Rule	Amendment	<i>Chapter 0520-2-4 Licensure</i> 0520-2-4-.02 Types of Licenses and Certificates 0520-2-4-.03 Alternative Licenses, Interim Licenses, and Permits	Rich Haglund GC 9th Fl Johnson Twr 710 J Robertson Pkwy Nashville TN 37243-1050 615-253-5707	August 28, 2006
04-19	April 19, 2006	1240 Human Services Child Support Services Division	Notice of Stay of Effective Date of Rules		1240-2-4 Child Support Guidelines		Effective through April 25, 2006. Rules effective June 26, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-20	April 20, 2006	1200 Health Board for Licensing Health Care Facilities	Rulemaking Hearing Rules	Amendments	<p><i>Chapter 1200-8-1</i> <i>Standards for Hospitals</i> 1200-8-1-.04 Administration</p> <p><i>Chapter 1200-8-10</i> <i>Standards for Ambulatory Surgical Treatment Centers</i> 1200-8-10-.04 Administration</p> <p><i>Chapter 1200-8-11</i> <i>Standards for Homes for the Aged</i> 1200-8-11-.05 Administration</p> <p><i>Chapter 1200-8-15</i> <i>Standards for Residential Hospices</i> 1200-8-15-.04 Administration 1200-8-11-.05 Admissions, Discharges and Transfers</p> <p><i>Chapter 1200-8-17</i> <i>Alcohol and other Drugs of Abuse Residential Rehabilitation Treatment Facilities</i> 1200-8-17-.04 Administration 1200-8-17-.05 Admissions, Discharges and Transfers</p> <p><i>Chapter 1200-8-18</i> <i>Alcohol and other Drugs of Abuse Non-Residential Treatment Facilities</i> 1200-8-18-.04 Administration</p> <p><i>Chapter 1200-8-19</i> <i>Alcohol and other Drugs of Abuse DUI School Facilities</i> 1200-8-19-.04 Administration</p> <p><i>Chapter 1200-8-20</i> <i>Alcohol and other Drugs of Abuse Prevention Program Facilities</i> 1200-8-20-.04 Administration</p> <p><i>Chapter 1200-8-21</i> <i>Alcohol and other Drugs of Abuse Non-Residential Narcotic Treatment Facilities</i> 1200-8-21-.04 Administration</p>	Richard Russell Health OGC 26th Fl TN Twr 212 8th Ave N Nashville TN 37247-0120 615-532-7156	July 4, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-20, cont.					<p><i>Chapter 1200-8-22</i> <i>Alcohol and other Drugs of Abuse Halfway House Treatment Facilities</i> 1200-8-22-.04, Administration 1200-8-22-.05 Admissions, Discharges and Transfers</p> <p><i>Chapter 1200-8-23</i> <i>Alcohol and other Drugs of Abuse Residential Detoxification Treatment Facilities</i> 1200-8-23-.04 Administration 1200-8-22-.05 Admissions, Discharges and Transfers</p> <p><i>Chapter 1200-8-24</i> <i>Standards for Birthing Centers</i> 1200-8-24-.04 Administration</p> <p><i>Chapter 1200-8-25</i> <i>Standards for Assisted-Care Living</i> 1200-8-25-.04 Administration 1200-8-22-.05 Admissions, Discharges and Transfers</p> <p><i>Chapter 1200-8-26</i> <i>Standards for Homecare Organizations Providing Home Health Services</i> 1200-8-26-.04 Administration</p> <p>Chapter 1200-8-27 Standards for Homecare Organizations Providing Hospice Services 1200-8-27-.04 Administration</p> <p><i>Chapter 1200-8-28</i> <i>Standards for HIV Supportive Living Facilities</i> 1200-8-28-.04 Administration 1200-8-28-.05 Admissions, Discharges and Transfers</p> <p><i>Chapter 1200-8-29</i> <i>Standards for Homecare Organizations Providing Home Medical Equipment</i> 1200-8-29-.04 Administration</p>		

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-20, cont.					<i>Chapter 1200-8-32 Standards for End Stage Renal Dialysis Clinics</i> 1200-8-29-.04 Administration		
04-26	April 26, 2006	0800 Labor and Workforce Development Division of Occupational Safety and Health	Proposed Rules	Amendments	<i>Chapter 0800-1-1 Occupational Safety and Health Standards for General Industry</i> 0800-1-1-.06 Adoption and Citation of Federal Standards <i>Chapter 0800-1-6 Occupational Safety and Health Standards for Construction</i> 0800-1-6-.02 Adoption and Citation of Federal Standards <i>Chapter 0800-1-7 Occupational Safety and Health Standards for Agriculture</i> 0800-1-7-.01 Adoption and Citation of Federal Standards 0800-1-7-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 <i>Chapter 0800-1-11 Occupational Safety and Health General Inspection Exemption Programs</i> 0800-1-11-.01 Purpose and Scope 0800-1-11-.02 Definitions 0800-1-11-.03 Exemption Program Administration 0800-1-11-.04 Safety Through Accountability and Recognition Program 0800-1-11-.05 Safety and Health Achievement and Recognition Program	Michael M. Maenza Labor and Workforce Development Occupational Safety and Health 3rd Fl Andrew Johnson Twr 710 James Robertson Pkwy Nashville TN 37243-0659 (615) 741-7036	August 28, 2006
04-27	April 26, 2006	0800 Labor and Workforce Development Division of Workers' Compensation Penalty Program	Rulemaking Hearing Rules	Amendments	<i>Chapter 0800-2-13 Penalty Program</i> 0800-2-13-.02 Investigation of Unpaid or Untimely Paid Workers' Compensation Benefits 0800-2-13-.03 Departmental Actions 0800-2-13-.04 Administrative Appeal of an Agency Decision Assessing a Civil Penalty for Unpaid or Untimely Paid Workers' Compensation Benefits	Peter B. Halverstadt Labor and Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville TN 37243-0661 (615) 532-2403	July 10, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-28	April 26, 2006	1155 Podiatry	Rulemaking Hearing Rule	Amendments New Rule	<i>Chapter 1155-2 General Rules and Regulations Governing the Practice of Podiatry</i> 1155-2-.02, Scope of Practice 1155-2-.04, Qualifications for Licensure 1155-2-.08, Examinations 1155-2-.12, Continuing Education 1155-2-.22 Advertising	Nicole Armstrong, Assistant General Counsel, Office of General Counsel, 26th Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37247-0120, (615) 741-1611	July 10, 2006
04-29	April 27, 2006	0800 Labor Workers' Compensation	Emergency Rules	Amendments	<i>Chapter 0800-2-18 Medical Fee Schedule</i> 0800-2-18-.02 General Information and Instructions for Use 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) 0800-2-18-.09 Physical and Occupational Therapy Guidelines	E. Blaine Sprouse Workers' Compensation Labor & Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville TN 37243-0661 (615) 253-0064	April 27, 2006 through Oct 9, 2006
04-30	April 27, 2006	0800 Labor Workers' Compensation	Proposed Rules	Amendments	<i>Chapter 0800-2-18 Medical Fee Schedule</i> 0800-2-18-.02 General Information and Instructions for Use 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) 0800-2-18-.09 Physical and Occupational Therapy Guidelines	E. Blaine Sprouse Workers' Compensation Labor & Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville TN 37243-0661 (615) 253-0064	Aug 28, 2006
04-31	April 27, 2006	0800 Labor Workers' Compensation	Emergency Rules	Amendments	<i>Chapter 0800-2-18 Medical Fee Schedule</i> 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)	E. Blaine Sprouse Workers' Compensation Labor & Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville TN 37243-0661 (615) 253-0064	April 27, 2006 through Oct 9, 2006

ANNOUNCEMENTS

SEQ. NO.	DATE FILED	DEPARTMENT AND DIVISION	TYPE OF FILING	DESCRIPTION	RULE NUMBER AND RULE TITLE	LEGAL CONTACT	EFFECTIVE DATE
04-32	April 27, 2006	0800 Labor Workers' Compensation	Proposed Rules	Amendments	<i>Chapter 0800-2-18 Medical Fee Schedule</i> 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges	E. Blaine Sprouse Workers' Compensation Labor & Workforce Development Andrew Johnson Twr 2nd Fl 710 James Robertson Pkwy Nashville TN 37243-0661 (615) 253-0064	Aug 28, 2006
04-33	April 28, 2006	0080 Agriculture	Emergency Rules	Amendments	<i>Chapter 0080-5-12 Kerosene and Motor Fuels Quality Inspection Regulations</i> 0080-5-12-.01 Definitions 0080-5-12-.02 Standard Specifications 0080-5-12-.03 Classification and Method of Sale of Petroleum Products 0080-5-12-.08 Test Methods and Reproducibility Limits	Phyllis Childs Agriculture P. O. Box 40627 Nashville TN 37204 615-837-5280	April 28, 2006 through Oct 9, 2006

ANNOUNCEMENTS

TENNESSEE HEALTH SERVICES AND DEVELOPMENT AGENCY - 0720

NOTICE OF BEGINNING OF REVIEW CYCLE

Visit the Tennessee Health Services and Development Agency web site at: <http://www.state.tn.us/hsda/> for the latest Notice of Beginning of Review Cycle.

ANNOUNCEMENTS

**TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240
CHILD SUPPORT SERVICES DIVISION**

NOTICE OF STAY OF EFFECTIVE DATE OF RULES

**1240-2-4
CHILD SUPPORT GUIDELINES**

The Tennessee Department of Human Services hereby gives notice pursuant to T.C.A. § 4-5-215(a) that the seventy-five (75) day period for Chapter 1240-2-4, Child Support Guidelines, filed with the Department of State on the 6th day of April, 2006, to have become effective on the 20th day of June, 2006, is hereby stayed for six (6) days.

The notice of stay set out herein was properly filed in the Department of State on the 19th day of April, 2006, and will be effective from the date of filing for a period of 6 days. The stay of the effective date of rules will remain in effect through the 25th day of April, 2006, unless properly withdrawn by the agency. (04-19)

ANNOUNCEMENTS

DEPARTMENT OF TRANSPORTATION - 1680

PETITION FOR DECLARATORY ORDER NOTICE OF HEARING

Pursuant to Tennessee Code Annotated Section 4-5-224, the Commissioner of the Tennessee Department of Transportation gives the following notice of hearing on a petition for declaratory order:

1. Petitioner's Name: William H. Thomas, Jr.

2. Petitioner's Attorney: Irma Merrill Stratton

Address: 2121 One Commerce Square
Memphis, Tennessee 38103
Telephone number: (901) 526-6464

3. Organization, if any, that the Petitioner represents: N/A

4. The agency rule, order or statutory provision on which declaratory order is sought is:

Tenn. Comp. R. & Reg. 1680-2-3-.03(4), which sets out the criteria for the erection and control of outdoor advertising. This rule provides that outdoor advertising is restricted to within 660 feet of the nearest edge of the highway right-of-way and is further restricted by requirements that no two such structures shall be spaced less than 1000 feet apart on the same side of the highway. There is an exception that allows structures to be spaced closer together when they are separated by buildings or other obstructions so that only one is visible from the main traveled way.

5. The facts and controversy at issue in this matter are that the Petitioner applied to the Department of Transportation for permits for certain outdoor advertising and was denied the issuance of those permits on the basis that the proposed location violated the required interstate spacing requirements contained in the regulations. The Petitioner disputes the denial and maintains that the proposed site is within the space and visibility exception of state regulations, that there is no basis for the refusal of the application; and, that said refusal is a violation of the law.

6. Summary of the relief requested:

Petitioner requests a declaratory order that the denial by the Department of Transportation of his application for a permit for outdoor advertising is invalid and contrary to law and that the Commissioner should order the permit to be issued.

A contested case hearing, Docket No. 22.01-090481J, has been scheduled by the Secretary of State, Administrative Procedures Division, for June 12, 2006, 10:00 a.m., Region III, 1stth Floor Conference Room, 6601 Centennial Boulevard, Nashville, TN 37243.

The Notice of Hearing of Petition for Declaratory Order set out herein was properly filed in the office of the Secretary of State, Publications Division, on this the 11th day of April, 2006. (04-07)

EMERGENCY RULES

- 1340 - Department of Safety - Division of Driver License Issuance - Emergency rules covering procedures for the issuance of certificates for driving, Chapter 1340-1-13 Classified and Commercial Drivers Licenses and Certificates for Driving, 4 T.A.R., Volume 32, Number 4 (April 13, 2006), Filed March 22, 2006; effective through September 3, 2006. (03-34) http://www.state.tn.us/sos/rules/emergency/emmer_index.htm

EMERGENCY RULES

DEPARTMENT OF AGRICULTURE - 0080 DIVISION OF REGULATORY SERVICES

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

Pursuant to T.C.A. §4-5-208, the Department of Agriculture is promulgating emergency rules that will amend Chapter 0080-5-12 Kerosene and Motor Fuels Quality Inspection Regulations covering standards for biodiesel and biodiesel blends conveyed for consumption in Tennessee. The emergency rules are necessary because of an order by the Governor to implement interim standards until permanent national standards are developed by ASTM International and available for adoption in state rules.

The Department has concluded that there is an emergency creating a threat to public safety and welfare as biodiesel and biodiesel blends are making a sudden and rapid entry into the marketplace prior to the final development of the ASTM International standards for these products. Therefore, absent any emergency rule, there will be no governmental oversight protecting consumers and industry from substandard products entering into commerce in Tennessee. The lack of these rules would be injurious to consumer's vehicles and to businesses that may unknowingly receive and convey products that are not suitable for use in diesel engines.

For copies of the entire text of the proposed amendments, contact: Jimmy Hopper, Director, Division of Regulatory Services, Department of Agriculture, Ellington Agricultural Center, 615-837-5150.

Jimmy Hopper
Director of Regulatory Services
Tennessee Department of Agriculture

EMERGENCY RULES OF THE DEPARTMENT OF AGRICULTURE

CHAPTER 0080-5-12 KEROSENE AND MOTOR FUELS QUALITY INSPECTION REGULATIONS

The text of the proposed amendments to the current rule as part of this emergency action is as follows:

Rule 0080-5-12-.01 Definitions (8) is amended by deleting the current language in its entirety and submitting the following language so that, as amended, the subparagraph shall read:

0080-5-12-.01 DEFINITIONS

- (8) "Biodiesel" means a fuel comprised of mono-alkyl esters of long chain fatty acids derived from vegetable oils or animal fats.

Authority: T.C.A. §47-18-1304 and §47-18-1309.

Paragraph (12) of rule 0080-5-12-.02 Standard Specifications is amended by deleting the current language in its entirety and submitting the following language so that, as amended, the subparagraph shall read:

EMERGENCY RULES

- (12) Biodiesel Fuel Blend Stock – All Biodiesel blend stock intended for blending with diesel fuel shall meet the most recent version of ASTM D 6751, “Standard Specification for Biodiesel Fuel (B100) Blend Stock for Distillate Fuels.”

Authority: T.C.A. §47-18-1304 and §47-18-1309.

Rule 0080-5-12-.02 Standard Specifications is amended by adding language in new paragraphs (14), (15), (16) and (17) to the current language so that, as amended, the rule shall read:

- (14) Biodiesel Blends up to 5 Percent by Volume – Biodiesel blends up to 5% by volume shall meet the most recent version of ASTM D 975, “Standard Specification for Diesel Fuel Oils.” At such time that an ASTM standard specification is developed for blends up to 5%, the ASTM standard shall prevail as rule.
- (15) Biodiesel Blends More Than Five Percent and Up to Twenty Percent by Volume – Biodiesel blends more than 5% and up to 20% by volume shall meet the most recent version of ASTM D 975, “Standard Specification for Diesel Fuel Oils”, except that the maximum temperature of the 90 percent volume recovered distillation point shall be five degrees centigrade greater than that specified in Table 1 of ASTM D 975. At such time that an ASTM standard specification is developed for blends greater than 5% and up to 20%, the ASTM standard shall prevail as rule.
- (16) Low Temperature Operability of Biodiesel Blends – All biodiesel blends must meet the tenth percentile minimum ambient temperature values for low temperature operability as published in ASTM D 975 Appendix X.4. Low temperature operability may be qualified by either ASTM Standard Test Method D 4539 or ASTM Standard Test Method D 2500.
- (17) Biodiesel Conveyed at Public Retail Sale Points – Biodiesel conveyed at retail sale points that are available to the general consuming public shall not exceed 20% by volume.

Authority: T.C.A. §47-18-1304 and §47-18-1309.

Rule 0080-5-12-.03 Classification and Method of Sale of Petroleum Products is amended by adding language in a new paragraph (12) and subparagraphs to the current language so that, as amended, the rule shall read:

- (12) Biodiesel
- (a) Identification of Product – Biodiesel and biodiesel blends containing more than 5% by volume shall be identified by the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel. (Examples: B10; B20; B100.)
- (b) Labeling of Dispensers Containing more than Five Percent (5%) and Up to Twenty Percent (20%) Biodiesel – Each dispenser of biodiesel blends containing more than 5% and up to and including 20% shall be labeled with either the capital letter B followed by the numerical value representing the volume percentage of biodiesel fuel and ending with "Biodiesel Blend". (Examples: B10 Biodiesel Blend; B20 Biodiesel Blend) or the phrase "Biodiesel Blend between 5 % and 20 %" or similar words.
- (c) Documentation for Dispenser Labeling Purposes - The retailer shall be provided, at the time of delivery of the fuel, with a declaration of the volume percent biodiesel on an invoice, bill

EMERGENCY RULES

of lading, shipping paper, or other document. This documentation is for dispenser labeling purposes only; it is the responsibility of any potential blender to determine the amount of biodiesel in the diesel fuel prior to blending.

Authority: *T.C.A. §47-18-1304 and §47-18-1309.*

Rule 0080-5-12-.08 Test Methods and Reproducibility Limits is amended by adding the following language and renumbering the remainder of the section:

- (3) Biodiesel Blends – The test method for determining the percent biodiesel in a blend of biodiesel and diesel fuel shall be EN 14078 “Liquid petroleum products – Determination of fatty methyl esters (FAME) in middle distillates – Infared spectroscopy method.” At such time that ASTM develops a comparable standard test method, the ASTM method shall become the standard method for purposes of this rule.

Authority: *T.C.A. §47-18-1304 and §47-18-1309.*

The emergency rules set out herein were properly filed in the Department of State on the 27th day of April, 2006 and will be effective from the date of filing for a period of 165 days. These emergency rules will remain in effect through the 9th day of October, 2006. (04-33)

EMERGENCY RULES

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0080 DIVISION OF WORKERS' COMPENSATION

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

The Commissioner of the Tennessee Department of Labor and Workforce Development ("Commissioner") makes this statement pursuant to Tenn. Code Ann. §§ 4-5-208 (2005 Repl.) and 50-6-204(i)(5) (2005 Repl.) The Commissioner hereby promulgates the following emergency rule amendments to the Medical Fee Schedule Rules under the Workers' Compensation Law as administered by the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.

Tennessee Code Annotated § 50-6-204(i)(1) (2005 Repl.), mandates the Commissioner establish a comprehensive medical fee schedule and related system. There are currently permanent rulemaking hearing rules which make up the Medical Fee Schedule Rules filed with the secretary of state that will become effective on May 1, 2006. These emergency amendments to those rules are necessary because the Commissioner has been advised that many medical providers may elect not to serve Tennessee workers' compensation injured employees if these amendments are not made. If these medical providers refuse to provide medical care to workers' compensation injured employees then these workers may not have access to quality medical care here in Tennessee. Thus, an immediate danger to the public health, safety and welfare exists and the fact that the new rulemaking hearing rules become effective May 1, 2006 precludes utilization of the other rulemaking procedures for the promulgation of permanent rule amendments. These amendments are being filed in proposed rule amendment format at this time as well to be in place before these emergency rule amendments expire.

James Neeley, Commissioner
Tennessee Department of Labor &
Workforce Development

For copies of these emergency rule amendments, contact: Rhonda Hutt, Administrative Secretary, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 532-1471.

EMERGENCY RULES OF THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0080 DIVISION OF WORKERS' COMPENSATION

CHAPTER 0800-2-18 MEDICAL FEE SCHEDULE

TABLE OF CONTENTS

- 0800-2-18-.02 General Information and Instructions for Use
- 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)
- 0800-2-18-.09 Physical and Occupational Therapy Guidelines

The text of the emergency amendments is as follows:

EMERGENCY RULES

AMENDMENTS

0800-2-18-.02 GENERAL INFORMATION AND INSTRUCTIONS FOR USE

Subparagraph (a) of paragraph (2) of rule 0800-2-18-02 General Information and Instructions for Use is amended by adding and inserting in after the third sentence which ends with the words "correct amount" the following: "For purposes of these Rules, the base Medicare amount may be adjusted upward annually based upon the annual Medicare Economic Index adjustment, but the maximum allowable amount of reimbursement under these Rules shall not fall below the effective 2005 Medicare amount for at least two (2) years from 2005," so that as amended the subparagraph shall read:

- (a) Unless otherwise indicated herein, the most current, effective Medicare procedures and guidelines are hereby adopted and incorporated as part of these Rules as if fully set out herein and effective upon adoption and implementation by the CMS. Whenever there is no specific fee or methodology for reimbursement set forth in these Rules for a service, diagnostic procedure, equipment, etc., then the maximum amount of reimbursement shall be 100% of the most current effective CMS' Medicare allowable amount. The most current effective Medicare guidelines and procedures shall be followed in arriving at the correct amount. For purposes of these Rules, the base Medicare amount may be adjusted upward annually based upon the annual Medicare Economic Index adjustment, but the maximum allowable amount of reimbursement under these Rules shall not fall below the effective 2005 Medicare amount for at least two (2) years from 2005. Whenever there is no applicable Medicare code or method of reimbursement, the service, equipment, diagnostic procedure, etc. shall be reimbursed at the usual and customary amount as defined in the Medical Cost Containment Program Rules at 0800-2-17-.03(80).

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Part 3. of subparagraph (b) of paragraph (2) of rule 0800-2-18-02 General Information and Instructions for Use is amended by deleting the words "contracted or other lower price;" and adding in its place the words "other contracted price" so that as amended the part shall read:

3. The MCO/PPO or any other contracted price;

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (a) of paragraph (4) of rule 0800-2-18-02 General Information and Instructions for Use is amended by deleting the words "100% of Medicare's LUPA" and replacing it with the words "Usual and Customary Amount," so that as amended the subparagraph shall read:

- (a) The conversion factors applicable under this Medical Fee Schedule are:

	<u>Conversion Factor</u>	<u>As a Percentage of National Medicare</u>
Anesthesiology.....	Usual and Customary Amount	
Chiropractic Care.....	\$49.27	130%
Dentistry.....	\$37.90	100%
General Surgery.....	\$75.80	200%
Home Health Care.....	Usual and Customary Amount	
Home Infusion.....	Usual and Customary Amount	

EMERGENCY RULES

Gen. Medicine (includes unlisted specialties, Evaluation & Management, etc.)

Office visits, E&M, etc. CPT codes	\$60.64	160%
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Emergency care CPT codes	\$75.80	200%
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Neurosurgery (board-eligible or certified physicians)	\$104.14	275%
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(Surgery by non-board eligible physicians paid general surgery rate)

Orthopedic Surg. (board-eligible or cert. physicians)	\$104.14	275%
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(Surgery by non-board eligible physicians paid general surgery rate)

Pathology.....	Usual and Customary Amount	
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Physical and Occupational Therapy		
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	For First 6 visits \$56.85	150%
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	Visits 7-12 \$49.27	130%
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	Visits over 12... \$37.90	100%
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Radiology	75.80	200%
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Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (b) of paragraph (4) of rule 0800-2-18-.02 is amended by deleting the following at the end of the paragraph, "*** 'LUPA' refers to the Medicare rates for low utilization Payment Adjustment," so that as amended the subparagraph shall read:

- (b) The appropriate conversion factor must be determined by the type of CPT code for the procedure performed in all cases except those involving orthopedic and neurosurgery. The appropriate conversion factor for all surgical CPT codes for surgical procedures by any physician other than certified and board-eligible neurosurgeons and orthopedic surgeons is \$75.80, (200% of national Medicare rates). Board-eligible and certified neurosurgeons and orthopedic surgeons shall use the neurosurgery and orthopedic surgery conversion factors for all surgery CPT codes. Evaluation and management CPT codes require the use of the associated conversion factor of \$60.64 (160% of National Medicare rates) by all physicians, including neurosurgeons and orthopedic surgeons.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-2-18-.07 AMBULATORY SURGICAL CENTERS AND OUTPATIENT HOSPITAL CARE INCLUDING EMERGENCY ROOM FACILITY CHARGES)

Subparagraph (h) of paragraph (1) of rule 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) is amended by deleting the current language in its entirety and adding a new subparagraph (1)(h), adding and inserting a new subparagraph (1)(i) and renumbering the current subparagraphs (1)(i), (1)(j), (1)(k) and (1)(l) so that as amended the subparagraphs shall read:

- (h) Facility services do not include (the following services may be billed and reimbursed separately from the facility fees, if allowed under current Medicare guidelines, with the exception of implantables, which at the discretion of the facility shall be billed and reimbursed separately in all cases and in all settings unless they are billed and reimbursed as part of a package or bundled charge):

1. Physician services

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2. Laboratory services
 3. Radiology services
 4. Diagnostic procedures not related to the surgical procedure
 5. Prosthetic devices
 6. Ambulance services
 7. Orthotics
 8. Implantables
 9. DME for use in the patient's home
 10. CRNA or Anesthesia Physician Services (supervision of CRNA is included in the facility fee)
 11. Take home medications
 12. Take home supplies
- (i) For cases involving implantation of medical devices, the facility shall at their discretion for each individual patient case, choose to bill and shall subsequently be reimbursed at either:
1. 150% of the entire Medicare OPPS payment as described above; or
 2. 150% of the non-device portion of the APC within the Medicare OPPS payment and separately bill and be reimbursed for implantable medical devices as described under Rule 0800-2-18-.10.
- (j) The listed services and supplies in subsection (1)(h) above shall be reimbursed according to the Medical Fee Schedule Rules, or at the usual and customary amount, as defined in these Rules, for items/services without an appropriate Medicare payment amount and not specifically addressed in the Medical Fee Schedule Rules.
- (k) There may be occasions in which the patient was scheduled for out patient surgery and it becomes necessary to admit the patient. All ambulatory patients who are admitted to the hospital and stay longer than 23 hours past ambulatory surgery will be paid according to the In-patient Hospital Fee Schedule Rules, Chapter 0800-2-19.
- (l) Pre-admission lab and x-ray may be billed separately from the Ambulatory Surgery bill when performed 24 hours or more prior to admission, and will be reimbursed the lesser of billed charges or the payment limit of the fee schedule. Pre-admission lab and radiology are not included in the facility fee.
- (m) Facility fees for surgical procedures not listed shall be reimbursed BR with a maximum of the usual and customary rate as defined in the Division's Rule 0800-2-17-.03(80).

EMERGENCY RULES

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-2-18-.09 PHYSICAL AND OCCUPATIONAL THERAPY GUIDELINES

Paragraph (1) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the word “of” before “\$10,000” in the first sentence, replacing it with the words “up to” before “\$10,000.00,” and adding the following at the end of the first sentence after the word “Commissioner,” “, for any physician who is not validly and currently board-certified by the American Board of Medical Specialties in one of the following four (4) specialties to refer a patient to a “physician-affiliated” facility for physical therapy or occupational therapy: Orthopedic Surgery, Neurological Surgery, Physiatry or Occupational Medicine. . Supporting written documentation shall be maintained showing all patients have been fully informed they have the right to go to a facility of their choosing and full disclosure in writing shall be made of any financial or beneficial interest held by any physician referring a patient to a physician-affiliated facility,” so that as amended the paragraph shall read:

- (1) It shall be a violation of these Rules, and may result in a civil penalty of up to \$10,000.00 per violation, as determined by the Commissioner, for any physician who is not validly and currently board-certified by the American Board of Medical Specialties in one of the following four (4) specialties to refer a patient to a “physician-affiliated” facility for physical therapy or occupational therapy: Orthopedic Surgery, Neurological Surgery, Physiatry or Occupational Medicine. Supporting written documentation shall be maintained showing all patients have been fully informed they have the right to go to a facility of their choosing and full disclosure in writing shall be made of any financial or beneficial interest held by any physician referring a patient to a physician-affiliated facility. For the purpose of these Medical Fee Schedule Rules, a “physician-affiliated” facility is one in which the referring physician (or her or his immediate family, which includes spouses, parents, children or spouses of children of the referring physician) or any of the referring physicians’ partners associated together in clinical practice has any type of financial interest, which includes, but is not limited to, any type of ownership, interest, debt, loan, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or any other form of direct or indirect benefit of any kind, whether in money or otherwise. Any hospital-based PT or OT facility shall also be deemed “physician-affiliated” if the referring physician is an employee of such hospital in which the facility is located, or if he or she receives a benefit of any kind from the referral.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (a) of paragraph (1) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the current language of the subparagraph in its entirety and adding a new subparagraph so that as amended the subparagraph shall read:

- (a) Notwithstanding any provision to the contrary, the physicians board-certified by the American Board of Medical Specialties in at least one of the four (4) medical specialties listed above in Rule 0800-2-18-.09(1) may refer a patient to a physician-affiliated facility if that physician determines it is in the patient’s best interest to refer the patient to a specific physician-affiliated facility for rehabilitation. Any physician may refer a patient to a physician-affiliated facility if there is no other physical therapy or occupational therapy facility within fifteen (15) miles of that patient’s residence or of the referring physician’s office.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

EMERGENCY RULES

Paragraph (2) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by adding the following after the word “scale” at the end of the first sentence: “based on the number of visits. The number of visits shall start over whenever surgery related to the injury is performed,” so that as amended the paragraph shall read as follows:

- (2) Charges for physical and/or occupational therapy services shall be reimbursed on a sliding scale based on the number of visits. The number of visits shall start over whenever surgery related to the injury is performed. Reimbursement shall not exceed one hundred fifty percent (150%) of the participating fees prescribed in the Medicare RBRVS System fee schedule (Medicare Fee Schedule) for the first six (6) visits, and shall not exceed one hundred thirty percent (130%) for visits 7 through 12. For all visits after visit 12, reimbursement shall not exceed one hundred percent (100%).

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Paragraph (5) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by adding additional language at the end of the paragraph so that as amended the paragraph shall read as follows:

- (5) For any procedure for which an appropriate Medicare code is not available, such as a Functional Capacity Evaluation or work hardening, the usual and customary charge, as defined in Rule 0800-2-17-.03(80), shall be the maximum amount reimbursable for such services. The current Medicare CPT codes available for Functional Capacity Evaluations are not appropriate for use under the TN Workers’ Compensation Medical Fee Schedule, thus, usual and customary is the proper reimbursement methodology for these procedures.

Paragraph (6) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the current paragraph and replacing it with a new paragraph (6) so that as amended the paragraph shall read as follows:

- (6) Whenever physical therapy and/or occupational therapy services are prescribed, then such treatment shall be reviewed pursuant to the carrier’s utilization review program in accordance with the procedures set forth in Chapter 0800-2-6 of the Division’s Utilization Review Rules and in accordance with Tenn. Code Ann. § 56-6-705 before physical therapy and/or occupational therapy services may be certified for payment by the carrier. Notification of a determination by the utilization review agent shall be mailed or otherwise communicated through electronic mail, facsimile and or telephone to the

provider of record or the enrollee or other appropriate individual within two (2) business days of the receipt of the request for determination and the receipt of all information necessary to complete the review from the carrier or employer. Failure of a provider to promptly (at least seven (7) business days before the last approved treatment is rendered) and properly and timely request utilization review of such services as prescribed herein shall result in the forfeiture of any payment for non-approved services. However, failure by carrier or employer to communicate denial or approval of a properly submitted request for utilization review within five (5) business days of the receipt of the request for determination and the receipt of all information necessary to complete the review shall be deemed an approval of the treatment requested. The initial utilization review of physical therapy and/or occupational therapy services may, if necessary and appropriate, certify up to six (6) visits. Subsequent utilization review shall be conducted to certify additional physical therapy and/or occupational therapy services after six (6) visits to the PT or OT facility. Further utilization review is required after each six (6) visit increment.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

EMERGENCY RULES

The emergency rule amendments set out herein were properly filed in the Department of State on the 27th day of April, 2006, and will be effective from the day of filing for a period of 165 days. These emergency rule amendments will remain in effect through the 9th day of October, 2006. (04-29)

EMERGENCY RULES

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF WORKERS' COMPENSATION

CHAPTER 0800-2-18 MEDICAL FEE SCHEDULE

STATEMENT OF NECESSITY REQUIRING EMERGENCY RULES

The Commissioner of the Tennessee Department of Labor and Workforce Development ("Commissioner") makes this statement pursuant to Tenn. Code Ann. §§ 4-5-208 (2005 Repl.) and 50-6-204(i)(5) (2005 Repl.) The Commissioner hereby promulgates the following emergency rule amendments to the Medical Fee Schedule Rules under the Workers' Compensation Law as administered by the Workers' Compensation Division of the Tennessee Department of Labor and Workforce Development.

Tennessee Code Annotated § 50-6-204(i)(1) (2005 Repl.), mandates the Commissioner establish a comprehensive medical fee schedule and related system. There are currently permanent rulemaking hearing rules which make up the Medical Fee Schedule Rules filed with the secretary of state that will become effective on May 1, 2006. These emergency amendments to those rules are necessary because the Commissioner has been advised that many medical providers may elect not to serve Tennessee workers' compensation injured employees if these amendments are not made. If these medical providers refuse to provide medical care to workers' compensation injured employees then these workers may not have access to quality medical care here in Tennessee. Thus, an immediate danger to the public health, safety and welfare exists and the fact that the new rulemaking hearing rules become effective May 1, 2006 precludes utilization of the other rulemaking procedures for the promulgation of permanent rule amendments. These amendments are being filed in proposed rule amendment format at this time as well to be in place before these emergency rule amendments expire.

James Neeley, Commissioner
Tennessee Department of Labor &
Workforce Development

For copies of these emergency rule amendments, contact: Rhonda Hutt, Administrative Secretary, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 532-1471.

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0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)

The text of the emergency amendments is as follows:

AMENDMENTS

Subparagraph (b) of paragraph (1) of rule 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) is amended by deleting the following current language in the last sentence, "(subject to wage-price index adjustment)," so that as amended the subparagraph shall read:

- (b) The CMS has implemented the Outpatient Prospective Payment System ("OPPS") under Medicare for reimbursement for hospital outpatient services at most hospitals. All services

EMERGENCY RULES

paid under the new OPPTS are classified into groups called Ambulatory Payment Classifications ("APC"). Services in each APC are similar clinically and in terms of the resources they require. The CMS has established a payment rate for each APC. Current APC Medicare allowable payment amounts and guidelines are available online at: <http://www.cms.hhs.gov/HospitalOutpatientPPS>. The payment rate for each APC group is the basis for determining the maximum total payment to which an ASC or hospital will be entitled.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (e) of paragraph (1) of rule 0800-2-18-.07 **Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)** is amended by deleting the current language in its entirety and replacing it so that as amended the subparagraph shall read:

- (e) Reimbursement for all outpatient services is based on the Medicare Ambulatory Payment Classification ("APC") national unadjusted base rates, which can be obtained from the Centers for Medicare and Medicaid Services. There are no adjustments for wage-price indices and these are not hospital-specific APC rate calculations. Reimbursements for Critical Access Hospitals ("CAH") are not based on CAH methodology but on the national unadjusted APC base rates as described in the preceding sentence.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

The emergency rule amendments set out herein were properly filed in the Department of State on the 27th day of April, 2006, and will be effective from the day of filing for a period of 165 days. These emergency rule amendments will remain in effect through the 9th day of October, 2006. (04-31)

PROPOSED RULES

THE STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-1-3 MINIMUM REQUIREMENTS FOR THE APPROVAL OF PUBLIC SCHOOLS

Presented herein are the proposed amendments of the State Board of Education submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate the amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments, contact Rich Haglund, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

The text of the proposed amendments is as follows:

AMENDMENTS

Subpart (i) of part 2. of subparagraph (g) of paragraph (2) of Rule 0520-1-3-.08 Pupil Personnel Services, Requirement G is amended by deleting the last sentence of the subpart so that as amended the subpart shall read:

- (i) Develop a comprehensive local AIDS plan which addresses appropriate education programs, confidentiality, liability, personnel, safety, curriculum, education, communications and public relations. The plan will be developed in conjunction with public health officials based upon guidelines approved by the State Board of Education.

Authority: T.C.A.. §§ 49-1-302(a)(2) and (13).

The proposed amendments set out herein were properly filed in the Department of State on the 17th day of April, 2006, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of August, 2006. (04-15)

PROPOSED RULES

THE STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-2-3 TEACHER EDUCATION AND LICENSURE

Presented herein are the proposed amendments of the State Board of Education submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate the amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments, contact Rich Haglund, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 0520-2-3-.21 Effective Dates is amended by deleting the rule in its entirety and substituting instead the following language so that as amended the rule shall read:

0520-2-3-.21 EFFECTIVE DATES

- (1) Teacher candidates seeking licensure and endorsement in the following areas of endorsement shall meet the requirements of Rules 0520-2-3-.01(1) through (9) and 0520-2-3-.11 by the effective dates listed below. Revised areas of endorsement are superseded according to the dates listed below.

	Effective Date	Superseded Date
Endorsement Area	Sept. 1	Aug. 31
Early Childhood and Elementary Education		
Early Development and Learning PreK-K	2009	
Early Childhood Education PreK-3	2008	
Early Childhood Education PreK-4	2002	2008
Elementary Education K-6	2007	
Elementary Education K-8	2001	2007
Elementary Education 1-8	1994	2003
Middle Grades Education 4-8	2008	
Middle Grades Education 5-8	2001	2008
Reading (PreK-4, PreK-3, K-8, K-6, 5-8, 4-8)	2002	
Secondary Education: Academic		
English 7-12	2001	

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French PreK-12 7-12	2001	
German PreK-12, 7-12	2001	
Latin PreK-12, 7-12	2001	
Russian PreK-12, 7-12	2001	
Spanish PreK-12, 7-12	2001	
Other Foreign Language PreK-12, 7-12	2001	
Mathematics 7-12	2001	
Biology 7-12	2001	
Chemistry 7-12	2001	
Physics 7-12	2001	
Physics 9-12	2001	
Earth Science 9-12	2001	
History 7-12	2001	
Government 7-12	2001	
Geography 7-12	2001	
Economics 7-12	2001	
Psychology 7-12	2001	
Sociology 7-12	2001	
Speech Communication 7-12	1995	
	Effective	Superseded
	Date	Date
Endorsement Area	Sept. 1	Aug. 31
Secondary Education: Vocational Technical		
Agriculture Education 7-12	2009	
Agriscience 7-12	2009	
Vocational Agriculture	1994	2009
Agriscience 7-12	1994	2009
Business Education 7-12	2004	
Business Technology 7-12	2004	
Basic Business 7-12	1994	2004
Keyboarding 1-6 and 7-12	1994	2004
Shorthand	1994	2004
Data Processing	1994	2004
Office Technology	1994	2004
Family and Consumer Sciences 5-12	2008	
Food Production & Management Services 9-12	2008	
Early Childhood Care and Services 9-12	2008	
Consumer and Homemaking 5-12	1994	2008
Care/Guidance of Children 9-12	1994	2008
Food Management, Production & Svcs 9-12	1994	2008
Clothing Management, Production & Svcs 9-12	1994	2008
Technology Engineering Education	2005	
Technology Education 5-12	1994	2005
Marketing Education 7-12	2010	
Marketing 7-12	1994	2010
Visual and Performing Arts K-12		
Visual Arts K-12	2009	
Visual Arts K-12	1994	2009
Vocal/General Music K-12	2009	
Vocal/General Music K-12	1994	2009
Instrumental/General Music K-12	2009	

PROPOSED RULES

Instrumental Music K-12	1994	2009
Theatre K-12	1995	
Dance K-12	2009	
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Special Education		
SE Preschool/Early Childhood PreK-3	2008	
SE Preschool/Early Childhood PreK-4	2006	2008
SE Preschool/Early Childhood PreK-1	1995	2006
SE Modified Program K-12	2006	
SE Modified Program K-12	1995	2006
SE Comprehensive Program K-12	2008	
SE Comprehensive Program K-12	1995	2008
SE Vision PreK-12	2009	
SE Vision PreK-12	1995	2009
SE Hearing PreK-12	1995	
SE Speech/Language Therapy Associate*	2008	
SE Speech/Language PreK-12	1995	2010
<hr/>		
	Effective Date	Superseded Date
Endorsement Area	Sept. 1	Aug. 31
<hr/>		
Health and Physical Education		
Health and Wellness Education K-12	2009	
Health K-12	1995	2009
Physical Education K-12	2009	
Physical Education K-12	1995	2009
<hr/>		
Occupational Education		
Health Sciences Education 9-12	2002	
Trade and Industrial Education 9-12	2002	
<hr/>		
Other		
English as a Second Language PreK-12	1999	
Reading Specialist PreK-12	2005	
Library Information Specialist PreK-12	2000	
Gifted Education PreK-12	2009	

* SE Speech/Language Therapy Associates shall meet the requirements of 0520-2-3-.01 (1), (2), (5), (6), (7), and (9).

- (2) Candidates seeking licensure and endorsement in the following areas shall meet the requirements of rules 0520-2-3-.01 (14), (15), (16), (19), and (20) by the effective dates listed below. Revised areas of endorsement are superseded according to the dates listed below.

	Effective Date	Superseded Date
Endorsement Area	Sept. 1	Aug. 31
School Counselor PreK-12	1996	
School Social Worker PreK-12	1996	
School Psychologist PreK-12	2001	
Sp Ed School Audiologist PreK-12	2006	
Sp Ed School Speech/Language Pathologist PreK-12	2006	

PROPOSED RULES

- (3) Candidates seeking endorsement as a beginning administrator shall meet the requirements of rules 0520-2-3-.01 (10) through (13) no later than September 1, 1994.
- (4) Candidates seeking to add endorsements to a teacher license shall meet the requirements of the initial endorsements no later than the date on which the requirements for the initial endorsements become effective.

Authority: *T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.*

The proposed amendments set out herein were properly filed in the Department of State on the 17th day of April, 2006, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of August, 2006. (04-16)

PROPOSED RULES

THE STATE BOARD OF EDUCATION - 0520

CHAPTER 0520-2-4 LICENSURE

Presented herein are the proposed amendments of the State Board of Education submitted pursuant to T.C.A. § 4-5-202 in lieu of a rulemaking hearing. It is the intent of the State Board of Education to promulgate the amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed with the State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, Tennessee 37243-1050, and in the Department of State, 8th Floor – William Snodgrass Building, 312 8th Avenue North, Nashville, Tennessee 37243, and must be signed by twenty-five (25) persons who will be affected by the amendments, or submitted by a municipality which will be affected by the amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments, contact Rich Haglund, State Board of Education, 9th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN, 37243-1050, (615) 741-2966.

The text of the proposed amendments is as follows:

AMENDMENTS

Rule 0520-2-4-.02 Types of Licenses and Certificates is amended by deleting the rule in its entirety and substituting instead the following language so that as amended the rule shall read:

0520-2-4-.02 TYPES OF LICENSES AND CERTIFICATES

- (1) Credentials Currently Issued.
 - (a) Apprentice License (Teacher, Special Group Teacher). Initial three-year license issued to applicants who have completed a bachelor's degree and an approved program and who have submitted minimum qualifying scores on required teacher licensure examinations. Renewable.
 - (b) Apprentice Occupational Education License. Initial three-year license issued upon satisfactory completion of issuance requirements. Renewable.
 - (c) Professional License. A ten-year teaching license issued upon satisfactory performance at the apprentice level and accrual of three years of teaching experience. Renewable.
 - (d) Professional Occupational Education License. A ten-year teaching license issued upon satisfactory performance at the apprentice level and completion of other issuance requirements including accrual of three years of teaching experience. Renewable.
 - (e) Out-of-State Teacher License. Initial three-year license issued to applicants with acceptable teaching experience in other states. The applicant must have completed a bachelor's degree and an approved teacher education program or a program under terms of a signed reciprocal contract with another state and must have submitted minimum qualifying scores on the required teacher licensure examinations. Renewable.

PROPOSED RULES

- (f) **Non-Public School Teacher License.** A five-year license issued to persons holding an apprentice or out-of-state license who are employed by a non-public school in Tennessee. The original term of the non-public school teacher license has the same expiration date as the teacher's existing apprentice or out-of-state license. Renewable.
- (g) **JROTC Teacher License.** A five-year license issued to active or retired military personnel who seek to serve as junior reserve officers' training corps (JROTC) teachers, based upon a certification of preparation by the branch of the military approving the teacher placement. The JROTC teacher license does not entitle an individual to teach courses other than those designated as part of the JROTC program, consistent with the requirements of TCA 49-5-108. No other teaching endorsements may be added to a JROTC license. JROTC teachers may earn a teaching credential with an endorsement in a content area through a teacher preparation program approved by the state board of education. Renewable.
- (h) **International Teacher Exchange License.** A three-year license issued to teachers participating in an international teacher exchange programs that meet certain criteria. Nonrenewable.
- (i) **Professional School Service Personnel License.** A ten-year license issued upon satisfactory performance at the apprentice level and accrual of three years of teaching experience. Renewable.
- (j) **Beginning Administrator A License.** Initial five-year license issued to applicants based upon a minimum of a master's degree, an approved school administration and supervision program, and submittal of minimum qualifying scores on the state required test/assessment for principals, supervisors of instruction, or other school administrators. Renewable.
- (k) **Beginning Administrator B License.** Initial five-year license issued to applicants based upon a minimum of a master's degree, an approved school administration and supervision program that included an internship, and submittal of minimum qualifying scores on the state required test/assessment for principals, supervisors of instruction, or other school administrators. Renewable.
- (l) **Professional Administrator License.** A ten-year license issued to applicants upon satisfactory performance for a minimum of two years (one year for applicants with approved internship experience) at the beginning administrator level as a principal, supervisor of instruction, or other school administrator position designated by state board of education policy to qualify for evaluation and recommendation for this license. Renewable. Persons having an endorsement in administration/supervision, supervisor of instruction, or principal on August 31, 1994, shall be issued a professional administrator license, regardless of whether such persons are employed as a principal, supervisor of instruction, or other educational position.
- (m) **Alternative License Type I.*** A one-year license issued to applicants with a bachelor's degree who have verified knowledge of the teaching content area in accordance with policies of the state board of education and have completed the pre-service portion of an approved alternative licensure program. Renewable two times upon satisfactory progress toward completion of the program, consistent with state board of education policies.
- (n) **Alternative License Type II.*** A one-year license issued to applicants with a bachelor's degree who have verified knowledge of the teaching content area in accordance with policies of

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the state board of education and who have been admitted to or are enrolled in an approved alternative licensure program. Renewable two times upon satisfactory progress toward completion of the program, consistent with state board of education policies.

- (o) Teach Tennessee License.* A one-year license issued to applicants who hold a bachelor's degree, have verified knowledge of the teaching content area and have completed a pre-service preparation program. Renewable two times upon satisfactory progress toward completion of the professional development requirements of the program.
 - (p) Interim B Teacher License. A one-year license issued to applicants who meet all licensing requirements but lack minimum qualifying scores on required teacher licensure examinations. Renewable one time.
 - (q) Interim D License for Interns. A one-year license issued to applicants who have a bachelor's degree and who have been admitted to an approved teacher education program that includes an internship. Renewable two times.
 - (r) Adjunct License. A one-year license issued to applicants who teach no more than three classes in subject areas of critical shortage as designated by the state board of education and who hold a bachelor's degree, have verified knowledge of the teaching content area and have completed a pre-service preparation program approved by the state board of education. Renewable nine times.
 - (s) Emergency Teaching Credential. A one-year credential, effective for only one school year, to be issued to displaced licensed teachers under one of the following circumstances:
 - 1. The Governor declares a state of emergency or declares a disaster under TCA 58-2-107, and the Commissioner of Education determines the necessity of conferring an emergency credential to displaced persons, or
 - 2. A federal state of emergency is declared anywhere in the United States, and the Commissioner of Education determines the necessity of conferring an emergency credential to displaced persons.
 - (t) Alternative A License.** A one-year license issued to applicants with a bachelor's degree in the teaching field. Renewable two times upon admission to a teacher preparation program and accrual of 6 semester hours with each renewal.
 - (u) Alternative C License.** A one-year license issued to applicants who have a bachelor's degree in the teaching or related field and who have completed the pre-service portion of an approved alternative preparation program. Renewable one time.
 - (v) Alternative E License.** A one-year license issued to applicants with a bachelor's degree who have verified their knowledge of the content area in accordance with policies and procedures approved by the state board of education. Renewable two times upon accrual of 6 semester hours with each renewal. **
- * Effective no later than school year 2007-08. Individuals may teach on an alternative license (of any kind) for a maximum of three years.

PROPOSED RULES

- ** Effective through the 2006-07 school year. Initial licenses may be issued to teach through the 2006-07 school year. No renewals will be issued for teaching after the 2008-09 school year, except that a speech-language teacher using an Alternative A license may renew the license for teaching through the 2009-10 school year.

Authority: T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.

Rule 0520-2-4-.03 Alternative Licenses, Interim Licenses, and Permits is amended by deleting the rule in its entirety and substituting instead the following language so that as amended the rule shall read:

0520-2-4-.03 ALTERNATIVE LICENSES, INTERIM LICENSES, AND PERMITS

- (1) Alternative licenses are issued to individuals who meet the following requirements and are valid until the following August 31:
 - (a) Alternative License, Type I. *
 1. The applicant must have been granted at least a bachelor's degree from a regionally accredited institution of higher education. The applicant must meet the content requirements for the desired area of endorsement by one of the following: (a) completion of an academic major in the desired area of endorsement, (b) documentation of at least 24 semester hours in the teaching content area or (c) successful completion of the required specialty examination.
 2. The applicant must have been admitted to an alternative preparation program consistent with policies adopted by the state board of education. The applicant must have successfully completed the pre-service portion (orientation component) of an approved alternative preparation program.
 3. A Tennessee director of schools must state intent to employ the applicant and must provide the requisite support of one or more teacher mentors throughout the alternative licensure period.
 4. Applicants are eligible to participate in programs for alternative preparation for licensure using the alternative license, type I, in all teaching areas. Applicants who are pursuing licensure in early childhood education, elementary education, middle grades education, and special education may be required to complete requirements addressing the knowledge and skills specified for the endorsement sought in addition to the professional education core.
 5. School systems shall assess the effectiveness of the teacher each year using evaluation procedures approved by the state board of education.
 6. Each year of successful teaching on an alternative license shall count as one apprentice year.
 7. One year of successful teaching shall substitute for the student teaching requirement if the alternative licensure program is completed following the first year of teaching. If completion of the alternative licensure program requires two or more years, then two years of successful teaching shall substitute for the student teaching requirement.

PROPOSED RULES

8. The alternative license, type I, may be reissued two times, provided that the teacher has received a successful evaluation and is making adequate progress in completing the professional development requirements of the alternative preparation program.

* Effective for teaching no later than school year 2007-08. Individuals may teach on an alternative license (of any kind) for a maximum of three years.

(b) Alternative License, Type II. *

1. The applicant must have been granted at least a bachelor's degree from a regionally accredited institution of higher education. The applicant must meet the content requirements for the desired area of endorsement by one of the following: (a) completion of an academic major in the desired area of endorsement, (b) documentation of at least 24 semester hours in the teaching content area or (c) successful completion of the required specialty examination.
2. The applicant must have been admitted to an alternative preparation program consistent with policies adopted by the state board of education. The applicant must complete the orientation component of the professional education core before the first renewal of the license.
3. A Tennessee director of schools must state intent to employ the applicant and provide the requisite support of one or more teacher mentors throughout the alternative licensure period.
4. Applicants are eligible to participate in programs for alternative preparation for licensure using the alternative license, type II, in all teaching areas. Applicants who are pursuing licensure in early childhood education, elementary education, middle grades education and special education may be required to complete requirements addressing the knowledge and skills specified for the endorsement sought in addition to the professional education core.
5. School systems shall assess the effectiveness of the teacher using the evaluation procedures approved by the state board of education.
6. Each year of successful teaching on an alternative license shall count as one apprentice year.
7. Two years of successful teaching shall substitute for the student teaching requirement.
8. The alternative license, type II, may be reissued two times, provided that the applicant has received a successful evaluation and is making adequate progress in completing the professional development requirements of the alternative preparation program.

* Effective for teaching no later than school year 2007-08. Individuals may teach on an alternative license (of any kind) for a maximum of three years.

(c) Alternative Licenses, Type I and II, for Pre-Kindergarten Teachers. *

1. The applicant who seeks employment in a state approved pre-kindergarten program or a program receiving a state early childhood education grant may be issued an

PROPOSED RULES

alternative license endorsed in early development and learning, early childhood education or special education preschool/early childhood.

2. The director of schools or the director of the program receiving a state early childhood education grant must state intent to employ the applicant in a pre-kindergarten program and fulfill all other obligations under the alternative license.

* Effective for teaching no later than school year 2007-08. Individuals may teach on an alternative license (of any kind) for a maximum of three years.

(d) Teach Tennessee License *

1. The applicant must have been granted at least a bachelor's degree from a regionally accredited institution of higher education. The applicant must meet the content knowledge requirements for the desired area of endorsement by one of the following: (a) documentation of at least 24 semester hours in the content area or (b) successful completion of the required specialty examination. The applicant must have at least five years of work experience in the subject area to be taught.
2. The applicant must have achieved a passing score on the teach Tennessee assessment profile and must have successfully completed the teach Tennessee pre-service preparation program, collaboratively planned and delivered by institutions of higher education, the department of education and K-12 personnel.
3. A Tennessee director of schools must make a commitment to carry out the program and provide the requisite support of one or more teacher mentors throughout the alternative licensure period.
4. Applicants are eligible to participate in the program in teaching areas serving students in grades 7-12.
5. School systems shall assess the effectiveness of the teacher each year using evaluation procedures approved by the state board of education.
6. Each year of successful teaching on the teach Tennessee license shall count as one apprentice year.
7. One year of successful teaching shall substitute for the student teaching requirement if the teach Tennessee licensure program is completed following the first year of teaching. If completion of the program requires two or more years, then two years of successful teaching shall substitute for the student teaching requirement.
8. The teach Tennessee license may be reissued two times, provided that the teacher has received a successful evaluation and is making adequate progress in completing the professional development requirements of the program.

* Effective for teaching no later than school year 2007-08. Individuals may teach on an alternative license (of any kind) for a maximum of three years.

(e) Alternative A License. **

PROPOSED RULES

1. The applicant must hold at least a bachelor's degree from a regionally accredited institution of higher education in the teaching field.
 2. A Tennessee director of schools must state intent to employ the applicant and must provide a mentor teacher for the applicant during the first two years of teaching.
 3. An individual may be reissued an alternative A license not more than two times provided that a director of schools states intent to employ. Before the first renewal, the individual must be enrolled in an institution with an approved program of studies. For each renewal, the individual must complete at least 6 semester hours of credit, unless all course requirements have been met.
 4. Applicants are eligible for an alternative A license in all teaching areas, except that if they seek licensure or renewal in the endorsement areas of early childhood education, middle grades education, or elementary education they must:
 - (i) Meet the admission standards of an approved teacher preparation program.
 - (ii) Make satisfactory progress in the program, including meeting any deficiencies in content area(s).
 - (iii) Be employed in a Tennessee school.
 5. An individual may present two years of successful teaching under an alternative A license in lieu of student teaching.
 6. An individual who holds an alternative A license with endorsement as a speech-language teacher and who has been admitted to a master's degree program in speech-language pathology accredited by the American Speech-Language-Hearing Association may renew the license not more than four times provided that the director of schools states intent to employ. Before each renewal the individual must complete at least 6 graduate semester hours required by the program to which the individual has been admitted, unless all course requirements have been met. The individual may not renew the license for teaching beyond the 2009-2010 school year.
- ** Effective for teaching through the 2006-07 school year. Initial licenses may be issued for teaching through the 2006-07 school year. No renewals will be issued for teaching after the 2008-09 school year, except that speech-language teachers using an Alternative A license may renew the license for teaching through 2009-10 school year.
- (f) Alternative C License. **
1. The applicant must have been granted at least a bachelor's degree from a regionally accredited institution of higher education in the teaching field or related field.
 2. The applicant must have successfully completed the pre-service portion of an alternative preparation program approved by the State Board of Education.
 3. A Tennessee director of schools must state intent to employ the applicant and to provide the requisite support of one or more teacher mentors during the first year of teaching.

PROPOSED RULES

4. Applicants are eligible to participate in programs for alternative preparation for licensure using the alternative C license in all areas.
 5. Successful completion of the teaching experience by the teacher will count as one apprentice year, or two apprentice years in the case of early childhood education, middle grades education, or special education if the preparation program and teaching span two years.
 6. The alternative C license may be reissued one time if the teacher has not completed all of the requirements within one year, and two times in the case of early childhood education, elementary education, middle grades education, or special education.
- ** Effective for teaching through the 2006-07 school year. Initial licenses may be issued for teaching through the 2006-07 school year. No renewals will be issued for teaching after the 2008-09 school year.

(g) Alternative E License. Alternative licensure for individuals who do not complete programs. **

1. The applicant must have been granted at least a bachelor's degree from a regionally accredited institution of higher education. The candidate must meet the content requirements for the desired area of endorsement by one of the following: (a) completion of an academic major in the desired area of endorsement, (b) determination by an institution of higher education that the person has met the knowledge and skills required for the desired area of endorsement, or (c) successful completion of the required specialty examination.
 2. A Tennessee director of schools must state intent to employ the applicant and must provide a mentor teacher for the applicant during the first two years of teaching.
 3. The applicant who has not completed professional education, must complete the professional education component of an approved teacher education institution, not to exceed 24 semester hours. The institution will verify completion of the required knowledge and skills through a combination of course work and field experiences and will verify that the applicant has completed the testing requirements in basic skills established by the State Board of Education.
 4. An individual may be reissued an alternative E license not more than two times provided that a director of schools states intent to employ. Before the first renewal, the individual must be enrolled in an institution with an approved program of studies. For each renewal, the individual must complete at least 6 semester hours of credit, unless all course work requirements have been met.
 5. Applicants are eligible for an alternative E license in all areas except early childhood education, middle grades education, and elementary education.
 6. In lieu of student teaching, an individual may present a positive recommendation from the employing school system verifying two years of successful teaching.
- ** Effective for teaching through the 2006-07 school year. Initial licenses may be issued for teaching through the 2006-07 school year. No renewals will be issued for teaching after the 2008-09 school year.

PROPOSED RULES

(h) Alternative A, Alternative C, and Alternative E Licenses for Pre-Kindergarten Teachers. **

1. The applicant who seeks employment in a state approved pre-kindergarten program or a program receiving a state early childhood education grant may be issued an alternative A license, alternative C license, or alternative E license endorsed in early development and learning, early childhood education or special education preschool/early childhood.
2. The director of schools or the director of the program receiving a state early childhood education grant must state intent to employ the applicant in a pre-kindergarten program and fulfill all other obligations under the alternative A license, alternative C license, or alternative E license.

** Effective for teaching through the 2006-07 school year. Initial licenses may be issued for teaching through the 2006-07 school year. No renewals will be issued for teaching after the 2008-09 school year.

(2) Interim licenses are issued to individuals who meet the following requirements and are valid until the following August 31.

(a) Interim B License.

1. An interim B license shall be issued if the applicant meets all requirements as determined by the state board of education.
2. A Tennessee director of schools must state intent to employ the applicant.
3. An individual may be reissued an interim B license one time provided that a director of schools states intent to employ and a second time if the director verifies that the individual meets the criteria stated in TCA 49-5-5605.
4. A fully licensed teacher from a state other than Tennessee who did not hold a teaching license in another state prior to July 1, 1984, and who meets all requirements except testing requirements, shall be issued an interim B license for one year. At the end of the first year of employment, upon successful completion of the test requirements, local evaluation, other minimum requirements, and the recommendation of the local education agency, the applicant may apply for the appropriate license based on allowable teaching experience.

(b) Interim D License for Interns.

1. The applicant must have been granted a bachelor's degree from a regionally accredited institution of higher education and must be admitted to an approved teacher education program that includes an internship.
2. The applicant must be recommended for the license by an institution of higher education with an approved teacher education program that includes an internship.
3. Successful completion of the internship shall count as the first apprentice year of teaching.

PROPOSED RULES

4. The interim D license for Interns may be reissued two times; an intern may teach using the license for the equivalent of no more than one school year.
- (3) Adjunct licenses are issued to individuals who meet the following requirements and are valid until the following August 31.
- (a) Adjunct License.
1. The applicant must hold at least a master's degree or a bachelor's degree with 24 semester hours of credit in the content area in which they will be teaching from a regionally accredited institution of higher education and must have at least five years of work experience in the subject(s) to be taught.
 2. The applicant for an adjunct license must have completed the pre-service portion of an adjunct licensure program that addresses the knowledge and skills in the professional education core and that has been approved by the state board of education.
 3. A Tennessee director of schools must state intent to employ the applicant for specific subject(s) and course(s) not to exceed three classes and must provide a mentor teacher for the applicant during the first year of teaching.
 4. Applicants are eligible for an adjunct license for the specific subject(s) or course(s) indicated on the application in subject areas of critical shortage as designated by the state board of education.
 5. School systems shall assess the effectiveness of the teachers annually using the evaluation procedures approved by the state board of education.
 6. Applicants may renew an adjunct license annually but not more than nine times provided that a director of schools states intent to employ and provided that the applicant has received a successful evaluation in the preceding year. Before the first renewal, the applicant must have passed all required licensure examinations.
 7. The teacher shall not attain licensure beyond the approved subject(s) or course(s) without successfully completing the state's regular or alternative licensure programs.
- (4) Permit.
- (a) The state may issue a permit when a school system meets the following requirements:
1. A director of schools must state intent to employ and indicate the position to be held by the applicant.
 2. The school system must indicate that it is unable to obtain the services of a licensed teacher for the type and kind of school in which a vacancy exists.
 3. The school system must have posted the position, advertised in appropriate media; and listed the position on a state or national Internet website.
- (b) The state may issue a permit to a school system to hire an applicant one time and only if the applicant holds a bachelor's degree. A bachelor's degree is not required for an applicant in occupational education.

PROPOSED RULES

Authority: *T.C.A. §§ 49-1-302, 49-5-101, 49-5-108.*

The proposed amendments set out herein were properly filed in the Department of State on the 17th day of April, 2006, pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of August, 2006. (04-17)

PROPOSED RULES

DEPARTMENT OF HEALTH - 1200 DIVISION OF HEALTH RELATED BOARDS

CHAPTER 1200-10-1 GENERAL RULES AND REGULATIONS

Presented herein is a proposed new rule of the Department of Health, Division of Health Related Boards submitted pursuant to Tennessee Code Annotated, Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Health, Division of Health Related Boards, to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the office of the Division of Health Related Boards on the First Floor of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, Tennessee 37247-1010 and in the Administrative Procedures Division of the Department of State, Eighth Floor, William R. Snodgrass Tennessee Tower, 312 Eighth Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rule or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of this proposed rule, contact: Jerry Kosten, Regulations Manager, Division of Health Related Boards, First Floor - Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

The text of the proposed new rule is as follows:

NEW RULE

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1200-10-1-.13 Screening Panels

1200-10-1-.13 SCREENING PANELS.

- (1) Any screening panel(s) established pursuant to T.C.A. § 63-1-138 shall have concurrent authority with the members of the applicable Board and with any individual practitioner designated by the applicable Board pursuant to such Board's authority to select consultant(s), to decide the following:
 - (a) What, if any, investigation should be instituted upon complaints received by the Division; and
 - (b) Whether a licensee who is the subject of a complaint received and/or an investigation conducted by the Division is an appropriate candidate pursuant to Board established guidelines for diversion to a professional peer review organization and/or impaired professional association; and
 - (c) Whether a disciplinary action should be instituted against a licensee; and
 - (d) What, if any, terms of settlement should be offered to a licensee. A proposed settlement for formal discipline will not become final unless it is subsequently ratified by the applicable Board or a duly constituted panel of the applicable Board.

PROPOSED RULES

- (2) A screening panel comprised of two (2) or more persons shall elect a chairperson prior to convening to conduct business. A screening panel shall include at least one (1) individual currently licensed by the applicable Board.
- (3) A screening panel comprised of two (2) or more persons is required in order to conduct the informal hearings set forth in paragraph (6).
- (4) When, and only when, a screening panel is used as a mechanism to resolve issues that are internal to the Division involving a complaint and/or an investigation, and no agreement that is binding on the subject of the complaint/investigation is authorized to be reached, the subject of the complaint/investigation need not be present and no prior or subsequent notice of such meeting of a screening panel need be issued to the subject of the complaint/investigation.
- (5) The Division shall provide notification and explanation to the Boards when there are substantive amendments to this rule.
- (6) After completion of an investigation by the Division, a screening panel, upon request of either the Department or the licensee who is the subject of an investigation, but only with the agreement of the Department, or upon request of both the licensee and the Department, may conduct an informal hearing and make recommendations as a result thereof as to what, if any, disciplinary action is appropriate. Any proposed settlement for formal discipline must be finalized pursuant to subparagraph (c) below.
 - (a) The Rules of Civil Procedure, the Rules of Alternative Dispute Resolution, the Rules of Evidence, and the Contested Case Procedural Rules under the Administrative Procedures Act shall not apply in informal hearings before the screening panel(s).
 - (b) A licensee who is the subject of an investigation being considered by a screening panel cannot be compelled to participate in any informal hearing.
 - (c) Proposed settlements for formal discipline will not become binding and final unless they are:
 - 1. Approved by a majority of the members of the screening panel which issued them; and
 - 2. Agreed to by both the Department and the licensee; and
 - 3. Subsequently presented to and ratified by the applicable Board or a duly constituted panel of the applicable Board.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-132, and 63-1-138.

The proposed rules set out herein were properly filed in the Department of State on the 5th day of April, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of August, 2006. (04-01)

PROPOSED RULES

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF OCCUPATIONAL SAFETY AND HEALTH

CHAPTER 0800-1-1 OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR GENERAL INDUSTRY

CHAPTER 0800-1-6 OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR CONSTRUCTION

CHAPTER 0800-1-7 OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

CHAPTER 0800-1-11 OCCUPATIONAL SAFETY AND HEALTH GENERAL INSPECTION EXEMPTION PROGRAMS

Presented herein are proposed amendments of the Department of Labor and Workforce Development, Division of Occupational Safety and Health submitted pursuant to T.C.A. §4-5-202 in lieu of a rulemaking hearing. It is the intent of the Department of Labor and Workforce Development to promulgate these proposed amendments without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed amendments are published. Such petition to be effective must be filed in the Legal Services Office of the Department of Labor and Workforce Development, 8th Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0655, and in the Administrative Procedures Division of the Department of State, 8th Floor, William R. Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243-0310, and must be signed by twenty-five (25) persons who will be affected by the proposed amendments or submitted by a municipality which will be affected by the proposed amendments, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of the proposed amendments, contact: Michael M. Maenza, Manager of Standards and Procedures, Tennessee Department of Labor and Workforce Development, Division of Occupational Safety and Health, 3rd Floor, Andrew Johnson Tower, 710 James Robertson Parkway, Nashville, TN 37243-0659, (615) 741-7036.

The text of the proposed amendments is as follows:

AMENDMENTS

Paragraph (2) of Rule 0800-1-1-.06 Adoption and Citation of Federal Standards is amended by changing the date in the second line from "January 1, 2006" to "July 1, 2006", so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1910, as of July 1, 2006 except as provided in Rule 0800-1-1-.07 of this chapter.

Authority: T.C.A. §§ 4-3-1411 and 50-3-201.

Paragraph (2) of Rule 0800-1-6-.02 Adoption and Citation of Federal Standards is amended by changing the date in the second line from "January 1, 2006" to "July 1, 2006", so that as amended the paragraph shall read:

PROPOSED RULES

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1926, as of July 1, 2006 except as provided in Rule 0800-1-6-.03 of this chapter.

Authority: T.C.A. §§ 4-3-1411, 50-3-103 and 50-3-201.

Paragraph (2) of Rule 0800-1-7-.01 Adoption and Citation of Federal Standards is amended by changing the date in the second line from “January 1, 2006” to “July 1, 2006”, so that as amended the paragraph shall read:

- (2) The Commissioner of Labor and Workforce Development adopts the federal occupational safety and health standards codified in Title 29, Code of Federal Regulations, Part 1928, as of July 1, 2006 except as provided in Rule 0800-1-7-.02 of this chapter.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Paragraph (1) of Rule 0800-1-7-.02 Exceptions to Adoption of Federal Standards in 29 CFR Part 1928 is amended by changing the date from “January 1, 2006” to “July 1, 2006”, so that as amended the paragraph shall read:

- (1) As of July 1, 2006, there are no exceptions.

Authority: T.C.A. §§4-3-1411 and 50-3-201.

Chapter 0800-1-11 Occupational Safety and Health General Inspection Exemption Programs is amended by deleting that language entirely and substituting the following language, so that as amended the titles and rules shall read:

0800-1-11-.01 PURPOSE AND SCOPE.

- (1) Purpose. The purpose of this chapter is to provide a description of the programs providing employers with an exemption from general schedule inspections conducted pursuant to the Act, and to set forth procedures to obtain, maintain, and revoke the exemption.
- (2) Scope. The provisions of this chapter apply to all private sector employers in the state of Tennessee subject to the provisions of the Act and the standards, rules and regulations promulgated pursuant thereto. The exemption program shall not apply to public sector employers as Tennessee Department of Labor and Workforce Development Rule 0800-1-5-.08(3)(a) specifically requires them to be inspected biennially.

Authority: T.C.A. §§50-3-102(b), 50-3-201, and 50-3-904.

PROPOSED RULES

0800-1-11-.02 DEFINITIONS.

- (1) "Accident inspection" means an inspection of a worksite conducted in response to information received by TOSHA that a fatality or catastrophe has occurred at that worksite. It is an unprogrammed inspection that shall be conducted in accordance with the guidelines in the TOSHA Field Operations Manual.
- (2) "Catastrophe" means the hospitalization of three or more employees resulting from a work-related incident or exposure; in general, from an accident or an illness caused by a workplace hazard. See also Tennessee Department of Labor and Workforce Development Rule 0800-1-3-.05.
- (3) "Complaint inspection" means an inspection of a worksite conducted in response to the receipt of a complaint about working conditions submitted in accordance with T.C.A. §50-3-304. It is an unprogrammed inspection that shall be conducted in accordance with the guidelines in the TOSHA Field Operations Manual.
- (4) "General schedule inspection" means an inspection of a worksite wherein the worksite was selected in advance using neutral criteria such as the industry ranking high on a list of recognized hazards or the number of occupational injuries and/or illnesses. It is a programmed inspection that shall be conducted in accordance with the guidelines in the TOSHA Field Operations Manual.
- (5) Except as set forth in paragraphs (1) through (4) of this rule or unless the context clearly calls for a different meaning, all words and terms used in this chapter shall have the meaning set forth in T.C.A. § 50-3-103 and Tennessee Department of Labor and Workforce Development Rule 0800-1-1-.02.

Authority: T.C.A. §§50-3-103, 50-3-201, 50-3-304 and 50-3-904.

0800-1-11-.03 EXEMPTION PROGRAM ADMINISTRATION.

- (1) TOSHA shall be responsible for receiving and processing applications for participation in exemption programs, maintaining required records pertinent to exemptions, and conducting inspections of worksites in order to determine eligibility for and/or continued participation in exemption programs.
- (2) General schedule inspections required under Tennessee Department of Labor and Workforce Development Rule 0800-1-4-.22 shall not be conducted at the worksites exempted under the programs set forth in this chapter.
- (3) Inspections required under Tennessee Department of Labor and Workforce Development Rule 0800-1-3-.05 shall be conducted whenever a fatality or catastrophe occurs at the worksites exempted under the programs set forth in this chapter.
- (4) A complaint inspection shall be conducted when an employee files a complaint about working conditions in accordance with T.C.A. §50-3-304.

Authority: T.C.A. §§50-3-102, 50-3-201, 50-3-301, 50-3-304 and 50-3-904.

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0800-1-11-.04 SAFETY THROUGH ACCOUNTABILITY AND RECOGNITION PROGRAM.

- (1) Establishment. There is established, within TOSHA, the Safety Through Accountability and Recognition Program herein called the Volunteer STAR Program.
- (2) Objective. The Volunteer STAR is a program for the recognition and promotion of outstanding employer-provided, employee-participant, site specific occupational safety and health systems.
- (3) Participation. The program is established on the basis of voluntary participation by employers. Qualified participants will be placed on a list of recognized employers and shall be exempt from programmed (general schedule) inspections contingent upon maintaining the requirements for participation and continued, favorable periodic evaluations.
- (4) Qualifications for participation. Minimum requirements for participation in the Volunteer STAR Program are contained in the OSHA Voluntary Protection Programs (VPP): Policies and Procedures Manual (Effective Date: March 25, 2003). The Volunteer STAR Program will recognize only the STAR Program category of participation as defined in Chapter I, Section XI, Paragraph A of the OSHA Voluntary Protection Programs (VPP) Policies and Procedures Manual (Effective Date: March 25, 2003).
- (5) Application. Application for participation in the Volunteer STAR Program shall be made to TOSHA. TOSHA will verify, evaluate, and recommend approval of the application to the Commissioner of Labor and Workforce Development.
- (6) Access to Records. All records of applications and evaluations made pursuant to the Volunteer STAR Program are public records accessible under the provisions of the Tennessee Open Records Law.
- (7) Withdrawal/Termination of Volunteer STAR Program Participation.
 - a. Any participant may choose to withdraw from the Volunteer STAR Program at any time following approval.
 - b. TOSHA must request that a site withdraw from the Volunteer STAR Program if any of the circumstances for withdrawal exist that are described in the OSHA Voluntary Protection Programs (VPP) Policies and Procedures Manual (Effective Date: March 25, 2003).
 - c. TOSHA may terminate a site from the Volunteer STAR Program for failure to maintain the requirements of the program or for any conditions as described in the OSHA Voluntary Protection Programs (VPP) Policies and Procedures Manual (Effective Date: March 25, 2003).
- (8) Reinstatement following withdrawal or termination.
 - a. Reinstatement requires reapplication.

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- b. A description of the timeframes and conditions for reinstatement are described in the OSHA Voluntary Protection Programs (VPP) Policies and Procedures Manual (Effective Date: March 25, 2003).

Authority: T.C.A. §§ 50-3-201, 50-3-301, 50-3-304 and 50-3-904.

0800-1-11-.05 SAFETY AND HEALTH ACHIEVEMENT AND RECOGNITION PROGRAM.

- (1) Establishment. There is established, within TOSHA, the Safety and Health Achievement Recognition Program herein called the Tennessee SHARP or SHARP.
- (2) Objective. SHARP is a recognition program which provides incentives and support to small, high-hazard employers to work with their employees to develop, implement and continuously improve the effectiveness of the workplace safety and health programs.
- (3) Recognition. To promote effective safety and health program management and to provide model programs for others to follow, SHARP recognizes employers who operate at their worksites exemplary safety and health programs that result in the immediate and long term prevention of job-related injuries and illnesses. This is achieved by:
 - (a) Encouraging employers to use TOSHA Consultative Services and to involve their employees in establishing fully effective safety and health programs.
 - (b) Providing for public recognition of employers and employees who have worked together successfully to establish exemplary safety and health programs when they have met specified conditions.
- (4) General schedule inspections required under Tennessee Department of Labor and Workforce Development Rule 0800-1-4-.22 shall not be conducted at the worksites exempted under the programs set forth in this chapter.
- (5) Inspections required under Tennessee Department of Labor and Workforce Development Rule 0800-1-3-.05 shall be conducted whenever a fatality or catastrophe occurs at the worksites exempted under the programs set forth in this chapter.
- (6) A complaint inspection shall be conducted when an employee files a complaint about working conditions in accordance with T.C.A. §50-3-304.
- (7) Program Eligibility. In order for an employer to be considered for participation in SHARP the employer shall be required to meet the criteria described in the most recent OSHA Consultation Service Consultation Policy and Procedures Manual (CPPM).
- (8) Program Requirements. The CPPM contains a detailed description of the program requirements including employer obligations and rights, the management of consultation requests and visit related requirements.
- (9) Termination of SHARP Participation. Termination of an employer's participation in the SHARP may occur for various reasons in accordance with the CPPM.

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- (10) Reinstatement/Reapplication. Reinstatement following termination may occur in accordance with the provisions set forth in the CPPM.

Authority: *T.C.A. §§50-3-201, 50-3-301, 50-3-304 and 50-3-904.*

The proposed rules set out herein were properly filed in the Department of State on the 26th day of April, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of August, 2006. (04-26)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF WORKERS' COMPENSATION

CHAPTER 0800-2-18 MEDICAL FEE SCHEDULE

Presented herein are proposed amendments of the Tennessee Department of Labor and Workforce Development submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Labor and Workforce Development to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Workers' Compensation Division, Second Floor of the Andrew Johnson Tower located at 710 James Robertson Parkway, Nashville, TN 37243-0661 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed rule amendments, contact: Rhonda Hutt, Administrative Secretary, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 532-1471.

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- 0800-2-18-.02 General Information and Instructions for Use
- 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)
- 0800-2-18-.09 Physical and Occupational Therapy Guidelines

The text of the proposed amendments is as follows:

AMENDMENTS

- 0800-2-18-.02 General Information and Instructions for Use

Subparagraph (a) of paragraph (2) of rule 0800-2-18-02 General Information and Instructions for Use is amended by adding and inserting in after the third sentence which ends with the words "correct amount" the following: "For purposes of these Rules, the base Medicare amount may be adjusted upward annually based upon the annual Medicare Economic Index adjustment, but the maximum allowable amount of reimbursement under these Rules shall not fall below the effective 2005 Medicare amount for at least two (2) years from 2005," so that as amended the subparagraph shall read:

- (a) Unless otherwise indicated herein, the most current, effective Medicare procedures and guidelines are hereby adopted and incorporated as part of these Rules as if fully set out herein and effective upon adoption and implementation by the CMS. Whenever there is no specific fee or methodology for reimbursement set forth in these Rules for a service, diagnostic procedure, equipment, etc., then the maximum amount of reimbursement shall be 100% of the most current effective CMS' Medicare allowable amount. The most current effective Medicare guidelines and procedures shall be followed in arriving at the correct amount. For purposes of these Rules, the base Medicare amount may be adjusted upward annually based upon the annual Medicare Economic Index

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adjustment, but the maximum allowable amount of reimbursement under these Rules shall not fall below the effective 2005 Medicare amount for at least two (2) years from 2005. Whenever there is no applicable Medicare code or method of reimbursement, the service, equipment, diagnostic procedure, etc. shall be reimbursed at the usual and customary amount as defined in the Medical Cost Containment Program Rules at 0800-2-17-.03(80).

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Part 3. of subparagraph (b) of paragraph (2) of rule 0800-2-18-02 General Information and Instructions for Use is amended by deleting the words "contracted or other lower price;" and adding in its place the words "other contracted price" so that as amended the part shall read:

3. The MCO/PPO or any other contracted price;

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (a) of paragraph (4) of rule 0800-2-18-02 General Information and Instructions for Use is amended by deleting the words "100% of Medicare's LUPA" and replacing it with the words "Usual and Customary Amount," so that as amended the subparagraph shall read:

- (a) The conversion factors applicable under this Medical Fee Schedule are:

	<u>Conversion Factor</u>	<u>As a Percentage of</u> <u>National Medicare</u>
Anesthesiology.....	Usual and Customary Amount	
Chiropractic Care.....	\$49.27	130%
Dentistry.....	\$37.90	100%
General Surgery.....	\$75.80	200%
Home Health Care.....	Usual and Customary Amount	
Home Infusion.....	Usual and Customary Amount	
Gen. Medicine (includes unlisted specialties, Evaluation & Management, etc.)		
Office visits, E&M, etc. CPT codes	\$60.64	160%
Emergency care CPT codes	\$75.80	200%
Neurosurgery (board-eligible or certified physicians)	\$104.14	275%
(Surgery by non-board eligible physicians paid general surgery rate)		
Orthopedic Surg. (board-eligible or cert. physicians)	\$104.14	275%
(Surgery by non-board eligible physicians paid general surgery rate)		
Pathology.....	Usual and Customary Amount	
Physical and Occupational Therapy		
	For First 6 visits \$56.85	150%
	Visits 7-12 \$49.27	130%
	Visits over 12... \$37.90	100%

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Radiology \$75.80 200%

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (b) of paragraph (4) of rule 0800-2-18-.02 is amended by deleting the following at the end of the paragraph, “** ‘LUPA’ refers to the Medicare rates for low utilization Payment Adjustment,” so that as amended the subparagraph shall read:

- (b) The appropriate conversion factor must be determined by the type of CPT code for the procedure performed in all cases except those involving orthopedic and neurosurgery. The appropriate conversion factor for all surgical CPT codes for surgical procedures by any physician other than certified and board-eligible neurosurgeons and orthopedic surgeons is \$75.80, (200% of national Medicare rates). Board-eligible and certified neurosurgeons and orthopedic surgeons shall use the neurosurgery and orthopedic surgery conversion factors for all surgery CPT codes. Evaluation and management CPT codes require the use of the associated conversion factor of \$60.64 (160% of National Medicare rates) by all physicians, including neurosurgeons and orthopedic surgeons.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-2-18-.07 AMBULATORY SURGICAL CENTERS AND OUTPATIENT HOSPITAL CARE (INCLUDING EMERGENCY ROOM FACILITY CHARGES)

Subparagraph (h) of paragraph (1) of rule 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) is amended by deleting the current language in its entirety and adding a new subparagraph (1)(h), adding and inserting a new subparagraph (1)(i) and renumbering the current subparagraphs (1)(i), (1)(j), (1)(k) and (1)(l) so that as amended the subparagraphs shall read:

- (h) Facility services do not include (the following services may be billed and reimbursed separately from the facility fees, if allowed under current Medicare guidelines, with the exception of implantables, which at the discretion of the facility shall be billed and reimbursed separately in all cases and in all settings unless they are billed and reimbursed as part of a package or bundled charge):
 - 1. Physician services
 - 2. Laboratory services
 - 3. Radiology services
 - 4. Diagnostic procedures not related to the surgical procedure
 - 5. Prosthetic devices
 - 6. Ambulance services
 - 7. Orthotics
 - 8. Implantables

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9. DME for use in the patient's home
 10. CRNA or Anesthesia Physician Services (supervision of CRNA is included in the facility fee)
 11. Take home medications
 12. Take home supplies
- (i) For cases involving implantation of medical devices, the facility shall at their discretion for each individual patient case, choose to bill and shall subsequently be reimbursed at either:
1. 150% of the entire Medicare OPPS payment as described above; or
 2. 150% of the non-device portion of the APC within the Medicare OPPS payment and separately bill and be reimbursed for implantable medical devices as described under Rule 0800-2-18-.10.
- (j) The listed services and supplies in subsection (1)(h) above shall be reimbursed according to the Medical Fee Schedule Rules, or at the usual and customary amount, as defined in these Rules, for items/services without an appropriate Medicare payment amount and not specifically addressed in the Medical Fee Schedule Rules.
- (k) There may be occasions in which the patient was scheduled for out patient surgery and it becomes necessary to admit the patient. All ambulatory patients who are admitted to the hospital and stay longer than 23 hours past ambulatory surgery will be paid according to the In-patient Hospital Fee Schedule Rules, Chapter 0800-2-19.
- (l) Pre-admission lab and x-ray may be billed separately from the Ambulatory Surgery bill when performed 24 hours or more prior to admission, and will be reimbursed the lesser of billed charges or the payment limit of the fee schedule. Pre-admission lab and radiology are not included in the facility fee.
- (m) Facility fees for surgical procedures not listed shall be reimbursed BR with a maximum of the usual and customary rate as defined in the Division's Rule 0800-2-17-.03(80).

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

0800-2-18-.09 PHYSICAL AND OCCUPATIONAL THERAPY GUIDELINES

Paragraph (1) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the word "of" before "\$10,000" in the first sentence, replacing it with the words "up to" before "\$10,000.00," and adding the following at the end of the first sentence after the word "Commissioner," " , for any physician who is not validly and currently board-certified by the American Board of Medical Specialties in one of the following four (4) specialties to refer a patient to a "physician-affiliated" facility for physical therapy or occupational therapy: Orthopedic Surgery, Neurological Surgery, Physiatry or Occupational Medicine. Supporting written documentation shall be maintained showing all patients have been fully informed they have the right to go to a facility of their choosing and full disclosure in writing shall be made of any financial or beneficial interest held by any physician referring a patient to a physician-affiliated facility," so that as amended the paragraph shall read:

PROPOSED RULES

- (1) It shall be a violation of these Rules, and may result in a civil penalty of up to \$10,000.00 per violation, as determined by the Commissioner, for any physician who is not validly and currently board-certified by the American Board of Medical Specialties in one of the following four (4) specialties to refer a patient to a "physician-affiliated" facility for physical therapy or occupational therapy: Orthopedic Surgery, Neurological Surgery, Physiatry or Occupational Medicine. Supporting written documentation shall be maintained showing all patients have been fully informed they have the right to go to a facility of their choosing and full disclosure in writing shall be made of any financial or beneficial interest held by any physician referring a patient to a physician-affiliated facility. For the purpose of these Medical Fee Schedule Rules, a "physician-affiliated" facility is one in which the referring physician (or her or his immediate family, which includes spouses, parents, children or spouses of children of the referring physician) or any of the referring physicians' partners associated together in clinical practice has any type of financial interest, which includes, but is not limited to, any type of ownership, interest, debt, loan, compensation, remuneration, discount, rebate, refund, dividend, distribution, subsidy, or any other form of direct or indirect benefit of any kind, whether in money or otherwise. Any hospital-based PT or OT facility shall also be deemed "physician-affiliated" if the referring physician is an employee of such hospital in which the facility is located, or if he or she receives a benefit of any kind from the referral.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (a) of paragraph (1) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the current language of the subparagraph in its entirety and adding a new subparagraph so that as amended the subparagraph shall read:

- (a) Notwithstanding any provision to the contrary, the physicians board-certified by the American Board of Medical Specialties in at least one of the four (4) medical specialties listed above in Rule 0800-2-18-.09(1) may refer a patient to a physician-affiliated facility if that physician determines it is in the patient's best interest to refer the patient to a specific physician-affiliated facility for rehabilitation. Any physician may refer a patient to a physician-affiliated facility if there is no other physical therapy or occupational therapy facility within fifteen (15) miles of that patient's residence or of the referring physician's office.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Paragraph (2) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by adding the following after the word "scale" at the end of the first sentence: "based on the number of visits. The number of visits shall start over whenever surgery related to the injury is performed," so that as amended the paragraph shall read as follows:

- (2) Charges for physical and/or occupational therapy services shall be reimbursed on a sliding scale based on the number of visits. The number of visits shall start over whenever surgery related to the injury is performed. Reimbursement shall not exceed one hundred fifty percent (150%) of the participating fees prescribed in the Medicare RBRVS System fee schedule (Medicare Fee Schedule) for the first six (6) visits, and shall not exceed one hundred thirty percent (130%) for visits 7 through 12. For all visits after visit 12, reimbursement shall not exceed one hundred percent (100%).

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

PROPOSED RULES

Paragraph (5) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by adding additional language at the end of the paragraph so that as amended the paragraph shall read as follows:

- (5) For any procedure for which an appropriate Medicare code is not available, such as a Functional Capacity Evaluation or work hardening, the usual and customary charge, as defined in Rule 0800-2-17-.03(80), shall be the maximum amount reimbursable for such services. The current Medicare CPT codes available for Functional Capacity Evaluations are not appropriate for use under the TN Workers' Compensation Medical Fee Schedule, thus, usual and customary is the proper reimbursement methodology for these procedures.

Authority: *T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).*

Paragraph (6) of rule 0800-2-18-.09 Physical and Occupational Therapy Guidelines is amended by deleting the current paragraph and replacing it with a new paragraph (6) so that as amended the paragraph shall read as follows:

- (6) Whenever physical therapy and/or occupational therapy services are prescribed, then such treatment shall be reviewed pursuant to the carrier's utilization review program in accordance with the procedures set forth in Chapter 0800-2-6 of the Division's Utilization Review Rules and in accordance with Tenn. Code Ann. § 56-6-705 before physical therapy and/or occupational therapy services may be certified for payment by the carrier. Notification of a determination by the utilization review agent shall be mailed or otherwise communicated through electronic mail, facsimile and/or telephone to the provider of record or the enrollee or other appropriate individual within two (2) business days of the receipt of the request for determination and the receipt of all information necessary to complete the review from the carrier or employer. Failure of a provider to promptly (at least seven (7) business days before the last approved treatment is rendered) and properly and timely request utilization review of such services as prescribed herein shall result in the forfeiture of any payment for non-approved services. However, failure by carrier or employer to communicate denial or approval of a properly submitted request for utilization review within five (5) business days of the receipt of the request for determination and the receipt of all information necessary to complete the review shall be deemed an approval of the treatment requested. The initial utilization review of physical therapy and/or occupational therapy services may, if necessary and appropriate, certify up to six (6) visits. Subsequent utilization review shall be conducted to certify additional physical therapy and/or occupational therapy services after six (6) visits to the PT or OT facility. Further utilization review is required after each six (6) visit increment.

Authority: *T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).*

The proposed amendments set out herein were properly filed in the Department of State on the 27th day of April, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of August, 2006. (04-30)

PROPOSED RULES

THE TENNESSEE DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT - 0800 DIVISION OF WORKERS' COMPENSATION

CHAPTER 0800-2-18 MEDICAL FEE SCHEDULE

Presented herein are proposed amendments of the Tennessee Department of Labor and Workforce Development submitted pursuant to T.C.A. Section 4-5-202 in lieu of a rulemaking hearing. It is the intent of the Tennessee Department of Labor and Workforce Development to promulgate these rules without a rulemaking hearing unless a petition requesting such hearing is filed within thirty (30) days of the publication date of the issue of the Tennessee Administrative Register in which the proposed rules are published. Such petition to be effective must be filed with the Workers' Compensation Division, Second Floor of the Andrew Johnson Tower located at 710 James Robertson Parkway, Nashville, TN 37243-0661 and in the Department of State, Eighth Floor, Tennessee Tower, William Snodgrass Building, 312 8th Avenue North, Nashville, TN 37243, and must be signed by twenty-five (25) persons who will be affected by the rule, or submitted by a municipality which will be affected by the rules, or an association of twenty-five (25) or more members, or any standing committee of the General Assembly.

For a copy of these proposed rule amendments, contact: Rhonda Hutt, Administrative Secretary, Tennessee Department of Labor and Workforce Development, Division of Workers' Compensation, Andrew Johnson Tower, Second Floor, 710 James Robertson Parkway, Nashville, TN 37243-0661, (615) 532-1471.

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0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)

The text of the emergency amendments is as follows:

AMENDMENTS

Subparagraph (b) of paragraph (1) of rule 0800-2-18-.07 Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges) is amended by deleting the following current language in the last sentence, "(subject to wage-price index adjustment)," so that as amended the subparagraph shall read:

- (b) The CMS has implemented the Outpatient Prospective Payment System ("OPPS") under Medicare for reimbursement for hospital outpatient services at most hospitals. All services paid under the new OPPS are classified into groups called Ambulatory Payment Classifications ("APC"). Services in each APC are similar clinically and in terms of the resources they require. The CMS has established a payment rate for each APC. Current APC Medicare allowable payment amounts and guidelines are available online at: <http://www.cms.hhs.gov/HospitalOutpatientPPS>. The payment rate for each APC group is the basis for determining the maximum total payment to which an ASC or hospital will be entitled.

PROPOSED RULES

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

Subparagraph (e) of paragraph (1) of rule 0800-2-18-.07 **Ambulatory Surgical Centers and Outpatient Hospital Care (Including Emergency Room Facility Charges)** is amended by deleting the current language in its entirety and replacing it so that as amended the subparagraph shall read:

- (e) Reimbursement for all outpatient services is based on the Medicare Ambulatory Payment Classification ("APC") national unadjusted base rates, which can be obtained from the Centers for Medicare and Medicaid Services. There are no adjustments for wage-price indices and these are not hospital-specific APC rate calculations. Reimbursements for Critical Access Hospitals ("CAH") are not based on CAH methodology but on the national unadjusted APC base rates as described in the preceding sentence.

Authority: T.C.A. §§ 50-6-204, 50-6-205 and 50-6-233 (Repl. 2005).

The proposed amendments set out herein were properly filed in the Department of State on the 27th day of April, 2006, and pursuant to the instructions set out above, and in the absence of the filing of an appropriate petition calling for a rulemaking hearing, will become effective on the 28th day of August, 2006. (04-32)

PUBLIC NECESSITY RULES

PUBLIC NECESSITY RULES NOW IN EFFECT

FOR TEXT OF PUBLIC NECESSITY RULE,
SEE T.A.R. CITED, <http://www.state.tn.us/sos/pub/tar/index.htm>
or
http://www.state.tn.us/sos/rules/necessity/nec_index.Htm

- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules allowing for the disenrollment of Medically Needy dual eligibles on or after January 1, 2006, chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (January 2006) - Filed December 9, 2005; effective through May 23, 2006. (12-09)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders and a state plan amendment., chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-38)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from court orders and a state plan amendment., chapter 1200-13-13 TennCare Medicaid, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-39)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Standard rules to reflect changes resulting from court orders and a state plan amendment, chapter 1200-13-14 TennCare Standard, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-40)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules required to conform the current TennCare Medicaid rules to reflect changes resulting from the amendment of the TennCare waiver, chapter 1200-13-14 TennCare Standard, 1 T.A.R. (January 2006) - Filed December 29, 2005; effective through June 12, 2006. (12-41)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules allowing for a Presumptive Eligibility process that will provide short term temporary and limited eligibility to persons who are likely to qualify for regular institutional Medicaid eligibility pursuant to DHS Rule 1240-3-3-.02(9) and provide them with home services that will keep them out of nursing homes at no financial risk to the person, chapter 1200-13-1 General Rules, 2 T.A.R. (February 2006) - Filed January 30, 2006; effective through July 14, 2006. (01-38)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding process for review and certification, chapter 1200-13-13, TennCare Medicaid, 4 T.A.R. (April 2006) - Filed March 3, 2006; effective through August 15, 2006. (03-01)

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- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding Severely and/or Persistently Mentally Ill persons, chapter 1200-13-13, TennCare Medicaid, 4 T.A.R. (April 2006) - Filed March 13, 2006; effective through August 25, 2006. (03-08)
- 0620 - Department of Finance and Administration - Bureau of TennCare - Public Necessity Rules regarding Severely and/or Persistently Mentally Ill persons, chapter 1200-13-14, TennCare Medicaid, 4 T.A.R. (April 2006) - Filed March 13, 2006; effective through August 25, 2006. (03-09)
- 1220 - Tennessee Regulatory Authority - Public Necessity Rules dealing with standards and procedures to implement certain financial security requirements regarding wastewater services by public utilities, Chapter 1220-4-13 Wastewater Regulations, 1 T.A.R. (January 2006) - Filed December 29, 2006; effective through June 12, 2006. (12-36)

PUBLIC NECESSITY RULES

THE DEPARTMENT OF COMMERCE AND INSURANCE - 0780 DIVISION OF REGULATORY BOARDS

STATEMENT OF NECESSITY REQUIRING PUBLIC NECESSITY RULES

Pursuant to T.C.A. § 4-5-209, the Commissioner of Commerce and Insurance is authorized to promulgate public necessity rules in the event that the rules are required by an enactment of the general assembly within a prescribed period of time that precludes utilization of rulemaking procedures described elsewhere in T.C.A. Title 4, Chapter 5, for the promulgation of permanent rules.

Chapter 65 of the Public Acts of 2005 created a new licensure program for home inspectors (the "Tennessee Home Inspector License Act of 2005") and required the Commissioner of Commerce and Insurance to promulgate rules and regulations to effectuate the purposes of the chapter. Section 11 of the Act specifically granted the Commissioner of Commerce and Insurance the authority to promulgate rules by public necessity to effectuate the intent of the Act. The Act makes the practice of home inspection unlawful on July 1, 2006 unless the person engaged in home inspection activities has met a number of prerequisites for licensure and has obtained a license granted by the Commissioner of Commerce and Insurance. These rules are necessary for the Commissioner of Commerce and Insurance to establish application requirements and to begin accepting and considering applications for home inspector licenses so that the licensure program may commence on July 1, 2006.

Due to the length of time necessary to complete the rulemaking process, these public necessity rules are required in order for the Commissioner of Commerce and Insurance to comply with the enactment of general assembly and to ensure that the Commissioner of Commerce and Insurance has the resources necessary to implement the Act. The Commissioner of Commerce and Insurance is conducting a rulemaking hearing on March 23, 2006 to consider comments on the adoption of these as permanent rules.

For a copy of these public necessity rules contact: Carol Kennedy, Home Inspector Licensing Program, 500 James Robertson Parkway, 2nd Floor, Nashville, Tennessee 37243 at (615) 253-1743.

Paula A. Flowers
Commissioner of Commerce and Insurance

PUBLIC NECESSITY RULES

**PUBLIC NECESSITY RULES
OF THE
DEPARTMENT OF COMMERCE AND INSURANCE
DIVISION OF REGULATORY BOARDS**

**CHAPTER 0780-5-12
HOME INSPECTORS**

NEW RULES

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0780-5-12-.01 PURPOSE.

The rules in this chapter implement the Tennessee Home Inspector License Act of 2005, T.C.A. § 62-6-301 et seq.

Authority: *Chapter 65 of the Public Acts of 2005, §§ 4, 11 and 12 and T.C.A. §§ 62-6-301 and 62-6-303(a)(5) [effective July 1, 2006].*

0780-5-12-.02 DEFINITIONS.

In addition to the definitions contained in T.C.A. § 62-6-302, the following definitions are applicable to this chapter:

- (1) "Commissioner" means the commissioner of commerce and insurance or the commissioner's designee;
- (2) "Continuing Education" means education that is creditable toward the education requirements that must be satisfied as a prerequisite for renewal of a license as a home inspector;
- (3) "Home" or "Residence" means any structure consisting of from one to four (1-4) dwelling units, intended to be or used principally for residential purposes;
- (4) "Instructor" means an individual who presents course materials approved for qualifying education and continuing education credit hours that has the necessary experience, training or education in the course subject matter and has been approved by the commissioner;
- (5) "Licensee" means an individual who holds a current, unexpired license as a home inspector issued by the commissioner;

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- (6) "Provider" means an individual or entity offering courses approved by the commissioner for qualifying education or continuing education credit hours;
- (7) "Qualifying Education" means education that is creditable toward the education requirements required for initial licensure as a home inspector.

Authority: *Chapter 65 of the Public Acts of 2005, §§ 3, 4, 11 and 12 and T.C.A. §§ 62-6-302 and 62-6-303(a)(5) [effective July 1, 2006].*

0780-5-12-.03 APPLICATION FOR LICENSE.

- (1) Any person who seeks to be licensed as a home inspector shall complete an application on a form prescribed by the commissioner and submit the completed application to the commissioner.
- (2) Applications for licensure are available upon request from the commissioner.
- (3) Any application submitted which lacks required information or reflects a failure to meet any requirement for licensure will be returned to the applicant with written notification of the information that is lacking or the reason(s) the application does not meet the requirements for licensure and will be held in "pending" status until satisfactorily completed within a reasonable period of time, not to exceed sixty (60) days from the date of application.
- (4) Any application submitted may be withdrawn; provided, however, that the application fee will not be refunded.

Authority: *Chapter 65 of the Public Acts of 2005, §§ 4, 6, 11 and 12 and T.C.A. §§ 62-6-303(a)(5) and 62-6-305 [effective July 1, 2006].*

0780-5-12-.04 APPLICATION REQUIREMENTS.

- (1) Beginning July 1, 2006, any person who desires to obtain a license as a home inspector shall submit an application to the commissioner, along with the required application fee.
- (2) On or after July 1, 2006 but before December 28, 2006, an applicant for licensure shall furnish evidence satisfactory to the commissioner that the applicant:
 - (a) Is at least eighteen (18) years of age;
 - (b) Has graduated from high school or earned a general education development ("GED") certificate;
 - (c) Has not been convicted of a felony or any other crime that has a direct bearing on the applicant's ability to perform competently and fully as a licensee;
 - (d) Has been principally engaged in the performance of home inspections in Tennessee for at least two (2) years preceding the date of the application;
 - (e) Has completed at least one hundred fifty (150) home inspections for compensation;
 - (f) Has passed an examination approved by the commissioner;

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- (g) Has a current certificate of general liability insurance in the amount of at least five hundred thousand dollars (\$500,000.00); and
 - (h) Has a current certificate of errors and omissions insurance to cover all home inspection activities contemplated under T.C.A. § 62-6-301 et seq. and these rules.
- (3) On or after December 28, 2006, an applicant for licensure shall furnish evidence satisfactory to the commissioner that the applicant:
- (a) Is at least eighteen (18) years of age;
 - (b) Has graduated from high school or earned a general education development (“GED”) certificate;
 - (c) Has not been convicted of a felony or any other crime that has a direct bearing on the applicant’s ability to perform competently and fully as a licensee;
 - (d) Has successfully completed ninety (90) hours of education approved by the commissioner in the performance of home inspections and the preparation of home inspection reports;
 - (e) Has passed an examination approved by the commissioner;
 - (f) Has a current certificate of general liability insurance in the amount of at least five hundred thousand dollars (\$500,000.00); and
 - (g) Has a current certificate of errors and omissions insurance to cover all home inspection activities contemplated under T.C.A. § 62-6-301 et seq. and these rules.
- (4) Reciprocity. The commissioner may grant a license as a home inspector to a nonresident of this state who holds a like, unexpired license as a home inspector in the individual’s resident state if the requirements for licensure in the applicant’s resident state are at least equivalent to the requirements for licensure in Tennessee. Such applicant shall file with the commissioner the required application form and fee, along with proof that the applicant holds a current, valid license as a home inspector in such applicant’s resident state.

Authority: Chapter 65 of the Public Acts of 2005, §§ 4, 6, 11 and 12 and T.C.A. §§ 62-6-303(a)(5) and 62-6-305 [effective July 1, 2006].

0780-5-12-.05 RENEWAL REQUIREMENTS.

- (1) A license issued to a home inspector pursuant to this chapter shall expire two (2) years from the date of its issuance and shall become invalid on such date unless renewed.
- (2) A home inspector may renew a current, valid license by submitting an application form approved by the commissioner, the required renewal fee, proof of having completed thirty-two (32) hours of commissioner-approved continuing education and any other information required for renewal, to the commissioner no earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license.
- (3) A licensee seeking to renew a license within the thirty (30) days immediately prior to the expiration date of the license may renew the license by submitting any required documentation, the fee for renewal, and a late penalty of \$25.00.

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- (4) A licensee who fails to pay the renewal fee, the applicable late penalty, or otherwise fails to comply with any of the prerequisites for renewal of a license before the expiration date of the license will have sixty (60) days after the expiration date of the license to renew the license upon payment of the renewal fee, payment of a late penalty of \$25.00, submittal of proof of compliance with any other prerequisites to renewal, and payment of an additional late penalty of \$25.00 for each month or fraction of a month that renewal is late.
- (5) Any person seeking renewal of a license more than sixty (60) days after the expiration date of the license is required to reapply for licensure and fulfill all of the requirements for initial licensure. In considering such reapplication, the commissioner has the discretion to:
 - (a) waive reexamination or additional education requirements beyond the examination and education presented at the time of initial licensure; or
 - (b) reinstate a license subject to the applicant's compliance with such reasonable conditions as the commissioner may prescribe, including payment of a penalty fee, in addition to the penalty fee provided in paragraph (4), of not more than twenty-five dollars (\$25.00) per month or portion thereof from the date the license expired.
- (6) A fee submitted by mail to the commissioner for purposes of renewal will be deemed to have been submitted on the date of the official postmark on such mail.

Authority: Chapter 65 of the Public Acts of 2005, §§ 4, 8, 11 and 12 and T.C.A. §§ 62-6-303(a)(5) and 62-6-307 [effective July 1, 2006].

0780-5-12-.06 FEES.

- (1) Nonrefundable application fee and initial license fee.....\$300.00
- (2) The examination fee will be set by the entity designated by the State to administer the examination.
- (3) Renewal fee.....\$200.00
- (4) The late renewal penalty fee is \$25.00 per month for each month or fraction of a month that renewal is late.

Authority: Chapter 65 of the Public Acts of 2005, §§ 4, 6, 8, 11 and 12 and T.C.A. §§ 62-6-303(a)(5), (7) and 62-6-307 [effective July 1, 2006].

0780-5-12-.07 QUALIFYING AND CONTINUING EDUCATION.

- (1) Course approval requirements.
 - (a) Any person or entity seeking to conduct an approved course for qualifying or continuing education credits shall make application and submit to the commissioner any documents, statements and forms as the commissioner may require. The complete application shall be submitted to the commissioner no later than thirty (30) days prior to the scheduled date of the course. At a minimum, a person or entity seeking approval to conduct a course for qualifying or continuing education shall provide:

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1. Name and address of the provider;
 2. Contact person and his or her address, telephone number, fax number and email address;
 3. The location of the courses or programs;
 4. The number and type of education credit hours requested for each course;
 5. Topic outlines, which list the summarized topics, covered in each course and upon request a copy of any course materials;
 6. If a prior approved course has substantially changed, a summarization of the changes; and
 7. The names and qualifications of each instructor who is qualified in accordance with paragraph (2) of this rule.
- (b) Acceptable topics include, but are not limited to:
1. Observing and identifying defects in structural components, foundations, roof coverings;
 2. Insulation and ventilation;
 3. Exterior and interior components;
 4. Plumbing, heating, cooling and electrical systems;
 5. Applicable state laws and rules;
 6. Business management.
- (c) In addition to accepting courses approved as described in this rule, qualifying and continuing education credits may be granted to an applicant or licensee if the applicant or licensee provides documentation acceptable to the commissioner that shows that the courses meet applicable requirements for the category of credit applied for, including proof that the applicant or licensee attended and successfully completed the course.
- (d) The commissioner may withhold or withdraw approval of any provider for violation of or failure to comply with any provision of this rule. Such withholding or withdrawal does not constitute a contested case proceeding pursuant to the Uniform Administrative Procedures Act compiled at T.C.A. Title 4, Chapter 5.
- (e) No person or entity sponsoring or conducting a course shall advertise that it is endorsed, recommended, or accredited by the commissioner. Such person or entity may indicate that the commissioner has approved a course of study if that course of study has been pre-approved by the commissioner before it is advertised or held.
- (f) Within five (5) working days after the completion of each course, the provider shall submit to the commissioner a list of all attendees, including, if applicable, the attendees'

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license numbers, who completed the course on the course completion form approved by the commissioner. If the course is for continuing education, each licensee successfully completing the course shall be furnished a certificate certifying completion.

- (g) Providers shall maintain course records for at least five (5) years. The commissioner may at any time examine such records to ensure compliance with this rule.
- (2) Instructor qualifications and requirements. A person seeking approval as an instructor shall submit an application on a form approved by the commissioner. If granted, the approval as an instructor shall be valid for a period of two (2) years from the date of the approval.
 - (a) An instructor shall have one of the following qualifications:
 - 1. Three (3) years of recent experience in the subject matter being taught; or
 - 2. A minimum of an associates degree in the subject area being taught; or
 - 3. Two (2) years of recent experience in the subject area being taught and twelve (12) hours of college credit and/or vocational technical school technical credit hours in the subject being taught.
 - 4. Other educational, teaching or professional qualifications determined by the commissioner which constitute an equivalent to (1) or more of the qualifications in parts (2)(a)1., 2., and 3. of this rule.
 - (b) In order to maintain approved status, an instructor shall furnish evidence on a form approved by the commissioner that the instructor has taught a commissioner-approved course, or any other course for qualifying or continuing education credit that the commissioner determines to be equivalent, within the preceding two (2) year period. Any instructor who does not meet their requirements of this subparagraph (2)(b) shall be required to submit a new application in accordance with subparagraph (2)(a) above.
- (3) In order to renew a license, and in addition to any other renewal requirements, the licensee shall submit to the commissioner a log, on a form provided by the commissioner, showing the type(s) of continuing education activity claimed, provider, location, duration, instructor's or speaker's name, description of the activity and continuing education units earned, along with the completion certificate(s) furnished by the provider. A licensee shall submit the log and the completion certificate(s) to the commissioner no earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license.
- (4) If a licensee who is not a resident of Tennessee satisfies a continuing education requirement for renewal of a license as a home inspector in the licensee's resident state, the licensee will be deemed to have met the continuing education requirement for Tennessee; provided, the continuing education requirements in the licensee's resident state are at least equivalent to the continuing education requirements in Tennessee. In order for the licensee to be deemed to have met the requirement, the licensee must file with the license renewal a certificate from the licensee's resident state certifying that the licensee has completed the continuing education requirement for licensure in that state. The certificate from the licensee's resident state verifying compliance with continuing education in the resident state must be received by the commissioner no earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license.

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Authority: Chapter 65 of the Public Acts of 2005, §§ 4, 8, 11 and 12 and T.C.A. §§ 62-6-303(a)(4), (5) and 62-6-307 [effective July 1, 2006].

0780-5-12-.08 CITATIONS.

- (1) The commissioner may issue citations against persons acting in the capacity of or engaging in the business of a home inspector without a license in violation of T.C.A. § 62-6-304. Each citation shall be in writing and describe with particularity the basis of the citation. Each citation shall contain an order to cease all violations of the applicable law, and an assessment of a civil penalty in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. § 62-6-304	\$50 - \$1000
(b) In determining the amount of any penalty to be assessed pursuant to this rule, the commissioner may consider such factors as the following:	
1. Whether the amount imposed will be a substantial economic deterrent to the violator;	
2. The circumstances leading to the violation;	
3. The severity of the violation and the risk of harm to the public;	
4. The economic benefits gained by the violator as a result of noncompliance;	
5. The interest of the public;	
6. Willfulness of the violation.	

Authority: Chapter 65 of the Public Acts of 2005, §§ 4, 8, 9, 11 and 12 and T.C.A. §§ 62-6-303(a)(5) and 62-6-308(b) [effective July 1, 2006].

0780-5-12-.09 CIVIL PENALTIES.

- (1) With respect to any licensed home inspector, the commissioner may, in addition to or in lieu of any other lawful disciplinary action, assess a civil penalty against such licensee for each separate violation of a statute, rule or commissioner's order pertaining to home inspectors, in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. § 62-6-308	\$50 - \$1000
(b) Rule 0780-5-12-.10	\$50 - \$1000
(c) Commissioner's order	\$50 - \$1000

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- (2) With respect to any person required to be licensed in this state as a home inspector, the commissioner may assess a civil penalty against such person for each separate violation of a statute in accordance with the following schedule:

Violation	Penalty
(a) T.C.A. § 62-6-304	\$50 - \$1000

- (3) Each day of continued violation may constitute a separate violation.
- (4) In determining the amount of any penalty to be assessed pursuant to this rule, the commissioner may consider such factors as the following:
- (a) Whether the amount imposed will be a substantial economic deterrent to the violator;
 - (b) The circumstances leading to the violation;
 - (c) The severity of the violation and the risk of harm to the public;
 - (d) The economic benefits gained by the violator as a result of noncompliance;
 - (e) The interest of the public;
 - (f) Willfulness of the violation.

Authority: Chapter 65 of the Public Acts of 2005, §§ 4, 5, 11 and 12 and T.C.A. §§ 56-1-308, 62-6-303(a)(5) and 62-6-308 [effective July 1, 2006].

0780-5-12-.10 STANDARDS OF PRACTICE.

- (1) Standards of Practice. This rule sets forth the minimum standards of practice required of licensed home inspectors.
- (2) Definitions. The following definitions apply to this rule:
- (a) "Automatic safety controls" means devices designed and installed to protect systems and components from excessively high or low pressures and temperatures, excessive electrical current, loss of water, loss of ignition, fuel leaks, fire, freezing, or other unsafe conditions;
 - (b) "Central air conditioning" means a system that uses ducts to distribute cooled or dehumidified air to more than one room or uses pipes to distribute chilled water to heat exchangers in more than one room, and that is not plugged into an electrical convenience outlet;
 - (c) "Component" means a readily accessible and observable aspect of a system, such as a floor, or wall, but not individual pieces such as boards or nails where many similar pieces make up the component;
 - (d) "Cosmetic damage" means superficial blemishes or defects that do not interfere with the functionality of the component or system;
 - (e) "Cross connection" means any physical connection or arrangement between potable water and any source of contamination;

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- (f) "Dangerous or adverse situations" means situations that pose a threat of injury to the home inspector, or those situations that require the use of special protective clothing or safety equipment;
- (g) "Describe" means report in writing a system or component by its type, or other inspected characteristics, to distinguish it from other systems or components used for the same purpose;
- (h) "Dismantle" means to take apart or remove any component, device or piece of equipment that is bolted, screwed, or fastened by other means and that would not be dismantled by a homeowner in the course of normal household maintenance;
- (i) "Enter" means to go into an area to inspect all visible components;
- (j) "Functional drainage" means a drain is functional when it empties in a reasonable amount of time and does not overflow when another fixture is drained simultaneously;
- (k) "Functional flow" means a reasonable flow at the highest fixture in a dwelling when another fixture is operated simultaneously;
- (l) "Inspect" means the act of making a visual examination;
- (m) "Installed" means attached or connected such that an item requires tools for removal;
- (n) "Normal operating controls" means homeowner operated devices such as a thermostat, wall switch, or safety switch;
- (o) "On-site water supply quality" means water quality is based on the bacterial, chemical, mineral, and solids content of the water;
- (p) "On-site water supply quantity" means the rate of flow of on-site well water;
- (q) "Operate" means to cause systems or equipment to function;
- (r) "Readily accessible" means approachable or enterable for visual inspection without the risk of damage to any property or alteration of the accessible space, equipment, or opening;
- (s) "Readily openable access panel" means a panel provided for homeowner inspection and maintenance that has removable or operable fasteners or latch devices in order to be lifted off, swung open, or otherwise removed by one person; and its edges and fasteners are not painted in place. This definition is limited to those panels within normal reach or from a four-foot stepladder, and that are not blocked by stored items, furniture, or building components;
- (t) "Readily visible" means seen by using natural or artificial light without the use of equipment or tools other than a flashlight;
- (u) "Representative number" means, for multiple identical components such as windows and electrical outlets, one such component per room; and, for multiple identical exterior components, one such component on each side of the building;

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- (v) "Roof drainage systems" means gutters, downspouts, leaders, splashblocks, and similar components used to carry water off a roof and away from a building;
 - (w) "Shut down" means a piece of equipment or a system which cannot be operated by the device or control that a homeowner should normally use to operate it. If its safety switch or circuit breaker is in the "off" position, or its fuse is missing or blown, the home inspector is not required to reestablish the circuit for the purpose of operating the equipment or system;
 - (x) "Significantly deficient" means unsafe or not functioning;
 - (y) "Solid fuel heating device" means any wood, coal, or other similar organic fuel burning device, including but not limited to fireplaces whether masonry or factory built, fireplace inserts and stoves, woodstoves (room heaters), central furnaces, and combinations of these devices;
 - (z) "Structural component" means a component that supports non-variable forces or weights (dead loads) and variable forces or weights (live loads);
 - (aa) "System" means a combination of interacting or interdependent components, assembled to carry out one or more functions;
 - (bb) "Technically exhaustive" means an inspection involving the use of measurements, instruments, testing, calculations, and other means to develop scientific or engineering findings, conclusions, and recommendations;
 - (cc) "Underfloor crawl space" means the area within the confines of the foundation and between the ground and the underside of the lowest floor structural component.
- (3) Purpose and Scope.
- (a) Home inspections performed according to this rule shall provide the client with an understanding of the property conditions at the time of the home inspection.
 - (b) Home inspectors shall:
 - 1. Provide a written contract, signed by the client or the client's legal representative that shall:
 - (i) State that the home inspection will be in accordance with the Standards of Practice promulgated by the commissioner;
 - (ii) Describe what services shall be provided and their cost;
 - (iii) State that the home inspection report will not address the items set forth in parts (5)(a)4. and 5. of this rule; and
 - (iv) State, when an inspection is for only one or a limited number of systems or components, that the inspection is limited to only those systems or components.
 - 2. Inspect readily visible and readily accessible installed systems and components listed in this rule; and
 - 3. Submit a written report to the client that shall at a minimum:

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- (i) Describe those systems and components required to be described in paragraphs (7) through (16) of this rule;
 - (ii) State which systems and components designated for inspection in this rule have been inspected, and state any systems or components designated for inspection that were not inspected, and the reason for not inspecting;
 - (iii) State any systems or components so inspected that do not function as intended, allowing for normal wear and tear, or adversely affect the habitability of the dwelling;
 - (iv) State whether the condition reported requires repair or subsequent observation, or warrants further investigation by a specialist; and
 - (v) State the name, license number, and signature of the person conducting the inspection.
- (c) This rule does not limit home inspectors from:
 - 1. Reporting observations and conditions or rendering opinions of items in addition to those required in paragraphs (7) through (16) of this rule; or
 - 2. Excluding systems and components from the inspection if requested by the client, and so stated in the written contract.
- (4) General Limitations.
 - (a) This rule applies to structures that are intended to be or are in fact used as residences, consisting of from one to four (1-4) family dwelling units and their attached garages or carports.
- (5) Required Reporting.
 - (a) The home inspection report shall include the following:
 - 1. A report on any system or component inspected that, in the opinion of the home inspector, is significantly deficient;
 - 2. A list of any systems or components that were designated for inspection in this rule but that were not inspected;
 - 3. The reason a system or component listed in accordance with part (5)(a)2. was not inspected;
 - 4. A statement that the report does not address environmental hazards, including:
 - (i) Lead-based paint;
 - (ii) Radon;
 - (iii) Asbestos;

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- (iv) Cockroaches;
 - (v) Rodents;
 - (vi) Pesticides;
 - (vii) Treated lumber;
 - (viii) Fungus;
 - (ix) Mercury;
 - (x) Carbon monoxide; or
 - (xi) Other similar environmental hazards.
5. A statement that the report does not address subterranean systems or system components (operational or nonoperational), including:
- (i) Sewage disposal;
 - (ii) Water supply; or
 - (iii) Fuel storage or delivery.
- (6) General Exclusions.
- (a) Home inspectors are not required to report on:
- 1. Life expectancy of any component or system;
 - 2. The cause(s) of the need for a repair;
 - 3. The methods, materials, and costs of corrections;
 - 4. The suitability of the property for any specialized use;
 - 5. Compliance or non-compliance with adopted codes, ordinances, statutes, regulatory requirements or restrictions;
 - 6. The market value of the property or its marketability;
 - 7. The advisability or inadvisability of purchase of the property;
 - 8. Any component or system that was not inspected;
 - 9. The presence or absence of pests such as wood damaging organisms, rodents, or insects; or
 - 10. Cosmetic damage, underground items, or items not permanently installed.
- (b) Home inspectors are not required to:

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1. Offer warranties or guarantees of any kind;
 2. Calculate the strength, adequacy, or efficiency of any system or component;
 3. Enter any area or perform any procedure that may damage the property or its components or be dangerous to or adversely affect the health or safety of the home inspector or other persons;
 4. Operate any system or component that is shut down or otherwise inoperable;
 5. Operate any system or component that does not respond to normal operating controls;
 6. Move personal items, panels, furniture, equipment, plant life, soil, snow, ice, or debris that obstructs access or visibility;
 7. Determine the effectiveness of any system installed to control or remove suspected hazardous substances;
 8. Predict future condition, including but not limited to failure of components;
 9. Project operating costs of components;
 10. Evaluate acoustical characteristics of any system or component; or
 11. Inspect special equipment or accessories that are not listed as components to be inspected in this rule.
- (c) Home inspectors shall not:
1. Offer or perform any act or service contrary to law; or
 2. Offer or perform engineering, architectural, plumbing, electrical or any other job function requiring a license in this state for the same client unless the client is advised thereof and consents thereto.

(7) Heating Systems.

- (a) The home inspector shall inspect permanently installed heating systems including:
1. Heating equipment;
 2. Normal operating controls;
 3. Automatic safety controls;
 4. Chimneys, flues, and vents, where readily visible;
 5. Solid fuel heating devices;
 6. Heat distribution systems including fans, pumps, ducts and piping, insulation, air filters, registers, radiators, fan coil units, convectors; and

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7. The presence of an installed heat source in each room.
- (b) The home inspector shall describe:
 1. The energy source for the system; and
 2. The heating equipment and distribution type.
- (c) The home inspector shall operate the systems using normal operating controls.
- (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.
- (e) The home inspector is not required to:
 1. Operate heating systems when weather conditions or other circumstances may cause equipment damage;
 2. Operate automatic safety controls;
 3. Ignite or extinguish solid fuel fires; or
 4. Inspect:
 - (i) The interior of flues;
 - (ii) Fireplace insert flue connections;
 - (iii) Humidifiers;
 - (iv) Electronic air filters; or
 - (v) The uniformity or adequacy of heat supply to the various rooms.
- (8) Cooling Systems.
 - (a) The home inspector shall inspect:
 1. Central air conditioning and through-the-wall installed cooling systems including:
 - (i) Cooling and air handling equipment; and
 - (ii) Normal operating controls.
 2. Distribution systems including:
 - (i) Fans, pumps, ducts and piping, dampers, insulation, air filters, registers, fan-coil units; and
 - (ii) The presence of an installed cooling source in each room.
 - (b) The home inspector shall describe:

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1. The energy source for the system; and
 2. The cooling equipment type.
- (c) The home inspector shall operate the systems using normal operating controls.
- (d) The home inspector shall open readily openable access panels provided by the manufacturer or installer for routine homeowner maintenance.
- (e) The home inspector is not required to:
1. Operate cooling systems when weather conditions or other circumstances may cause equipment damage;
 2. Inspect window air conditioners; or
 3. Inspect the uniformity or adequacy of cool-air supply to the various rooms.
- (9) Electrical Systems.
- (a) The home inspector shall inspect:
1. Service entrance conductors;
 2. Service equipment, grounding equipment, main overcurrent device, and main and distribution panels;
 3. Amperage and voltage ratings of the service;
 4. Branch circuit conductors, their overcurrent devices, and the compatibility of their ampacities and voltages;
 5. The operation of a representative number of installed ceiling fans, lighting fixtures, switches and receptacles located inside the house, garage, and on the dwelling's exterior walls;
 6. The polarity and grounding of all receptacles within six feet of interior plumbing fixtures, and all receptacles in the garage or carport, and on the exterior of inspected structures;
 7. The operation of ground fault circuit interrupters; and
 8. Smoke detectors.
- (b) The home inspector shall describe:
1. Service amperage and voltage;
 2. Service entry conductor materials;
 3. The service type as being overhead or underground; and
 4. The location of main and distribution panels.

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- (c) The home inspector shall report the presence of any readily accessible single strand aluminum branch circuit wiring.
- (d) The home inspector shall report on the presence or absence of smoke detectors, and operate their test function, if accessible.
- (e) The home inspector is not required to:
 - 1. Insert any tool, probe, or testing device inside the panels;
 - 2. Test or operate any overcurrent device except ground fault circuit interrupters;
 - 3. Dismantle any electrical device or control other than to remove the covers of the main and auxiliary distribution panels; or
 - 4. Inspect:
 - (i) Low voltage systems;
 - (ii) Security system devices, heat detectors, or carbon monoxide detectors;
 - (iii) Telephone, security, cable TV, intercoms, or other ancillary wiring that is not a part of the primary electrical distribution system; or
 - (iv) Built-in vacuum equipment.

(10) Plumbing Systems.

- (a) The home inspector shall inspect:
 - 1. Interior water supply and distribution system, including: piping materials, supports, and insulation; fixtures and faucets; functional flow; leaks; and cross connections;
 - 2. Interior drain, waste, and vent system, including: traps; drain, waste, and vent piping; piping supports and pipe insulation; leaks; and functional drainage;
 - 3. Hot water systems including: water heating equipment; normal operating controls; automatic safety controls; and chimneys, flues, and vents; and
 - 4. Sump pumps.
- (b) The home inspector shall describe:
 - 1. Water supply and distribution piping materials;
 - 2. Drain, waste, and vent piping materials;
 - 3. Water heating equipment; and
 - 4. The location of any main water supply shutoff device.
- (c) The home inspector shall operate all plumbing fixtures, including their faucets and all exterior faucets attached to the house, except where the flow end of the faucet is connected to an appliance.

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- (d) The home inspector is not required to:
 - 1. State the effectiveness of anti-siphon devices;
 - 2. Determine whether water supply and waste disposal systems are public or private;
 - 3. Operate automatic safety controls;
 - 4. Operate any valve except water closet flush valves, fixture faucets, and hose faucets;
 - 5. Inspect:
 - (i) Water conditioning systems;
 - (ii) Fire and lawn sprinkler systems;
 - (iii) On-site water supply quantity and quality;
 - (iv) On-site waste disposal systems;
 - (v) Foundation irrigation systems;
 - (vi) Bathroom spas, except as to functional flow and functional drainage;
 - (vii) Swimming pools;
 - (viii) Solar water heating equipment; or
 - 6. Inspect the system for proper sizing, design, or use of proper materials.

(11) Structural Components and Foundations.

- (a) The home inspector shall inspect structural components including:
 - 1. Foundation;
 - 2. Floors;
 - 3. Walls;
 - 4. Columns or piers;
 - 5. Ceilings; and
 - 6. Roofs.
- (b) The home inspector shall describe the type of:
 - 1. Foundation;
 - 2. Floor structure;

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3. Wall structure;
 4. Columns or piers;
 5. Ceiling structure; and
 6. Roof structure.
- (c) The home inspector shall:
1. Probe structural components where deterioration is suspected;
 2. Enter underfloor crawl spaces, basements, and attic spaces except when access is obstructed, when entry could damage the property, or when dangerous or adverse situations are suspected;
 3. Report the methods used to inspect underfloor crawl spaces and attics; and
 4. Report signs of water penetration into the building or signs of condensation on building components.

(12) Roof Coverings.

- (a) The home inspector shall inspect:
1. Roof coverings;
 2. Roof drainage systems;
 3. Flashings;
 4. Skylights, chimneys, and roof penetrations; and
 5. Signs of leaks or abnormal condensation on building components.
- (b) The home inspector shall:
1. Describe the type of roof covering materials; and
 2. Report the methods used to inspect the roofing.
- (c) The home inspector is not required to:
1. Walk on the roofing; or
 2. Inspect attached accessories including solar systems, antennae, and lightning arrestors.

(13) Exterior Components.

- (a) The home inspector shall inspect:

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1. Wall cladding, flashings, and trim;
2. Entryway doors and a representative number of windows;
3. Garage door operators;
4. Decks, balconies, stoops, steps, areaways, porches and applicable railings;
5. Eaves, soffits, and fascias; and
6. Vegetation, grading, drainage, driveways, patios, walkways, and retaining walls with respect to their effect on the condition of the building.

(b) The home inspector shall:

1. Describe wall cladding materials;
2. Operate all entryway doors and a representative number of windows;
3. Operate garage doors manually or by using permanently installed controls for any garage door operator;
4. Report whether or not any garage door operator will automatically reverse or stop when meeting reasonable resistance during closing; and
5. Probe exterior wood components where deterioration is suspected.

(c) The home inspector is not required to inspect:

1. Storm windows, storm doors, screening, shutters, awnings, and similar seasonal accessories;
2. Fences;
3. For the presence of safety glazing in doors and windows;
4. Garage door operator remote control transmitters;
5. Geological conditions;
6. Soil conditions;
7. Recreational facilities (including spas, saunas, steam baths, swimming pools, tennis courts, playground equipment, and other exercise, entertainment, or athletic facilities), except as otherwise provided in this rule;
8. Detached buildings or structures; or
9. For the presence or condition of buried fuel storage tanks.

(14) Interior Components.

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(a) The home inspector shall inspect:

1. Walls, ceiling, and floors;
2. Steps, stairways, balconies, and railings;
3. Counters and a representative number of built-in cabinets; and
4. A representative number of doors and windows.

(b) The home inspector shall:

1. Operate a representative number of windows and interior doors; and
2. Report signs of water penetration into the building or signs of condensation on building components.

(c) The home inspector is not required to inspect:

1. Paint, wallpaper, and other finish treatments on the interior walls, ceilings, and floors;
2. Carpeting; or
3. Draperies, blinds, or other window treatments.

(15) Insulation and Ventilation.

(a) The home inspector shall inspect:

1. Insulation and vapor retarders in unfinished spaces;
2. Ventilation of attics and foundation areas;
3. Kitchen, bathroom, and laundry venting systems; and
4. The operation of any readily accessible attic ventilation fan, and, when temperature permits, the operation of any readily accessible thermostatic control.

(b) The home inspector shall describe:

1. Insulation in unfinished spaces; and
2. The absence of insulation in unfinished space at conditioned surfaces.

(c) The home inspector is not required to report on:

1. Concealed insulation and vapor retarders; or
2. Venting equipment that is integral with household appliances.

(16) Built-In Kitchen Appliances.

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- (a) The home inspector shall inspect and operate the basic functions of the following kitchen appliances:
 - 1. Permanently installed, dishwasher(s) through a normal cycle;
 - 2. Range(s), cook top(s), and permanently installed oven(s);
 - 3. Trash compactor(s);
 - 4. Garbage disposal(s);
 - 5. Ventilation equipment or range hood(s); and
 - 6. Permanently installed microwave oven(s).
- (b) The home inspector is not required to inspect:
 - 1. Clocks, timers, self-cleaning oven functions, or thermostats for calibration or automatic operation;
 - 2. Non built-in appliances; or
 - 3. Refrigeration units.
- (c) The home inspector is not required to operate:
 - 1. Appliances in use; or
 - 2. Any appliance that is shut down or otherwise inoperable.

Authority: Chapter 65 of the Public Acts of 2005, §§ 4, 11 and 12 and T.C.A. § 62-6-303(a)(5), (6) [effective July 1, 2006].

0780-5-12-.11 CODE OF ETHICS.

- (1) Licensees shall discharge their duties with fidelity to the public, their clients, and with fairness and impartiality to all.
- (2) Opinions expressed by licensees shall only be based on their education, experience, and honest convictions.
- (3) A licensee shall not disclose any information about the results of an inspection without the approval of the client for whom the inspection was performed, or the client's designated representative.
- (4) No licensee shall accept compensation or any other consideration from more than one interested party for the same service without the consent of all interested parties.
- (5) No licensee shall accept or offer commissions or allowances, directly or indirectly, from other parties dealing with the client in connection with work for which the licensee is responsible.
- (6) No licensee shall express, within the context of an inspection, an appraisal or opinion of the market value of the inspected property.

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- (7) Before the execution of a contract to perform a home inspection, a licensee shall disclose to the client any interest in a business that may affect the client. No licensee shall allow his or her interest in any business to affect the quality or results of the inspection work that the licensee may be called upon to perform.
- (8) Licensees shall not engage in false or misleading advertising or otherwise misrepresent any matters to the public.

Authority: *Chapter 65 of the Public Acts of 2005, §§ 4, 11 and 12 and T.C.A. § 62-6-303(a)(5), (6) [effective July 1, 2006.*

The public necessity rules set out herein was properly filed in the Department of State on this the 7th day of April, 2006, and will be effective from the date of filing for a period of 165 days. These public necessity rules will remain in effect through the 19th day of September, 2006. (04-05)

RULEMAKING HEARINGS

THE TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 0400 DIVISION OF REMEDIATION

There will be a hearing conducted by the Division of Remediation on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Hickman County Justice Center, Meeting Room, 104 College Street, Centerville, TN 37033 on June 20th, 2006 at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-1-13 HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION

AMENDMENTS

Rule 1200-1-13-.13 List of Inactive Hazardous Substance Sites is amended by deleting the following site from the list, such deletion being made in a manner so that the entire list remains in numerical order:

<u>Site Number</u>	<u>Site Name</u>
Hickman County (41)	
41-503	R. T. Rivers Pinewood, TN

Authority: T.C.A. § 68-212-206(e) and § 68-212-215(e).

The notice of rulemaking set out herein was properly filed in the Department of State on the 18th day of April, 2006. (04-18)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF ENVIRONMENT AND CONSERVATION - 400 DIVISION OF REMEDIATION

There will be a hearing conducted by the Division of Remediation on behalf of the Solid Waste Disposal Control Board to receive public comments regarding the promulgation of amendment of rules pursuant to T.C.A. Sections 68-212-203 and 68-212-215. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place at the Sullivan County Courthouse, Courtroom, 3411 Highway 126, Blountville, TN 37617 on June 22, 2006, at 6:00 p.m. Individuals with disabilities who wish to participate should contact the Tennessee Department of Environment and Conservation to discuss any auxiliary aids or services needed to facilitate such participation. Such contact may be in person, by writing, telephone, or other means and should be made no less than ten (10) days prior to the hearing date to allow time to provide such aid or services. Contact: Tennessee Department of Environment and Conservation, ADA Coordinator, 7th Floor Annex, 401 Church Street, Nashville, TN 37248, (615)532-0059. Hearing impaired callers may use the Tennessee Relay Service, (1-800-848-0298)

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-1-13 HAZARDOUS SUBSTANCE SITE REMEDIAL ACTION

AMENDMENTS

Rule 1200-1-13-.13 List of Inactive Hazardous Substance Sites is amended by deleting the following site from the list, such deletion being made in a manner so that the entire list remains in numerical order:

<u>Site Number</u>	<u>Site Name</u>
	Sullivan County (82)
82-544	Vance Tank Road Battery Site Bristol, TN

Authority: T.C.A. § 68-212-206(e) and § 68-212-215(e).

The notice of rulemaking set out herein was properly filed in the Department of State on the 17th day of April, 2006. (04-14)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. CD.T. on the 15th day June 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

Paragraph (5) of rule 1200-13-13-.01 Definitions (Application Fee) is deleted in its entirety and subsequent paragraphs renumbered accordingly.

Paragraph (17) renumbered as (16) of rule 1200-13-13-.01 Eligibility is amended by deleting subparagraph (e) in its entirety so as amended the renumbered paragraph (16) shall read as follows:

(16) COMPLETED APPLICATION is an application where:

- (a) All required fields have been completed;
- (b) It is signed and dated by the applicant or the applicant's parent or guardian;
- (c) It included all supporting documentation required by TDHS or the Bureau to determine TennCare eligibility, technical and financial requirements as set out in these rules; and
- (d) It includes all supporting documentation required to prove TennCare Standard medical eligibility as set out in these rules.

Subparagraph (d) of paragraph (110) to be renumbered as paragraph (109) of rule 1200-13-13-.01 Definitions (TennCare Standard) is amended by deleting the last sentence so as amended subparagraph (d) shall read as follows:

- (d) Had Medicare as of December 31, 2001 (but not Medicaid) and were enrolled in the TennCare Program as of December 31, 2001, and who continue to meet the definition of "uninsurable" in effect at that time; or

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of April, 2006. (04-34)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. CD.T. on the 15th day June 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULE

Paragraph (1) of rule 1200-13-13-.03 Enrollment, Disenrollment, Re-enrollment and Reassignment is amended by adding a new subparagraph (n) which shall read as follows:

- (n) In the event an enrollee entering a MCO's plan is receiving medically necessary prenatal care the day before enrollment, the MCO shall be responsible for the costs of continuation of such medically necessary services, without any form of prior approval and without regard to whether such services are being provided within or outside the MCO's provider network until such time as the MCO can reasonably transfer the enrollee to a service and/or network provider without impeding service delivery that might be harmful to the enrollee's health.

In the event an enrollee entering the MCO's plan is in her second or third trimester of pregnancy and is receiving medically necessary prenatal care services the day before enrollment, the MCO shall be responsible for providing continued access to the provider (regardless of network affiliation) through the postpartum period. Reimbursement to an out-of-network provider shall be as set out in rule 1200-13-13-.08.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of April, 2006. (04-35)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. CD.T. on the 15th day June 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

Part 6. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new part 6. which shall read as follows:

RULEMAKING HEARINGS

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
<p>6. Dental Services [defined at 42 CFR §440.100].</p>	<p>Preventive, diagnostic, and treatment services covered as medically necessary.</p> <p>Dental services under EPSDT, including dental screens, are provided in accordance with the state's periodicity schedule as determined after consultation with recognized dental organizations and at other intervals as medically necessary.</p> <p>Orthodontic services must be prior approved and are limited to individuals under age 21 requiring these services for one of the following reasons:</p> <p>(1) because of a handicapping malocclusion or another developmental anomaly or injury resulting in severe misalignment or handicapping malocclusion of teeth. The Salzmann Index will be used to measure the severity of the malocclusion. A Salzmann score of 28 will be used as the threshold value for making orthodontic determinations of medical necessity. In addition, individual consideration will be applied for those unique orthodontic cases that may not be accounted for solely by the Salzmann Index;</p> <p>(2) following repair of an enrollee's cleft palate.</p> <p>Orthodontic treatment will not be authorized for cosmetic purposes. Orthodontic treatment will be paid for by TennCare only as long as the individual remains eligible for TennCare.</p> <p>If the orthodontic treatment plan is approved prior to the enrollee's attaining 20 ½ years of age, and treatment is initiated prior to the enrollee's attaining 21 years of age, such treatment may continue as long as the enrollee remains eligible for TennCare.</p> <p>The MCO is responsible for the provision of transportation to and from covered dental services, as well as the medical and anesthesia services related to the covered dental services.</p>	<p>Not covered, except for orthodontic treatment when an orthodontic treatment plan was approved prior to the enrollee's attaining 20 ½ years of age, and treatment was initiated prior to the enrollee's attaining 21 years of age; such treatment may continue as long as the enrollee remains eligible for TennCare.</p>

RULEMAKING HEARINGS

Part 13. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new part 13. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
13. Inpatient Hospital Services [defined at 42 CFR §440.10].	Covered as medically necessary. Preadmission and concurrent reviews allowed.	Covered as medically necessary. Preadmission and concurrent reviews allowed.

Part 14. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new part 14. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
14. Inpatient Rehabilitation Facility Services.	See "Inpatient Hospital Services."	Not covered.

Part 23. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new part 23. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
23. Organ and Tissue Transplant Services and Donor Organ/Tissue Procurement Services [defined as the transfer of an organ or tissue from an individual to a TennCare enrollee].	Covered as medically necessary. Experimental or investigational transplants are not covered.	Covered as medically necessary when coverable by Medicare. Experimental or investigational transplants are not covered.

Part 38. of subparagraph (b) of paragraph (1) of rule 1200-13-13-.04 Covered Services is deleted in its entirety and replaced with a new part 38. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
38. Rehabilitation services	See "Occupational Therapy," "Physical Therapy," and "Speech Therapy," and "Inpatient Rehabilitation Facility Services."	See "Occupational Therapy," "Physical Therapy," and "Speech Therapy."

RULEMAKING HEARINGS

Rule 1200-13-13-.10 Exclusions is deleted in its entirety and replaced with a new rule 1200-13-13-.10 which shall read as follows:

1200-13-13-.10 EXCLUSIONS.

- (1) General exclusions. The following items and services shall not be considered covered services by TennCare:
 - (a) Provision of medical assistance which is outside the scope of benefits as defined in these rules.
 - (b) Provision of services to persons who are not enrolled in TennCare, either on the date the services are delivered or retroactively to the date the services are delivered, except for limited special appeal provisions pertaining to children who are placed in Youth Development Centers as defined in the Grier Revised Consent Decree, Section C.15.f. and pursuant to the DCS Interagency Agreement.
 - (c) Services for which there is no Federal Financial Participation (FFP).
 - (d) Services provided outside the United States or its territories.
 - (e) Services provided outside the geographic borders of Tennessee, including transportation to return to Tennessee to receive medical care except in the following circumstances:
 1. Emergency medical services are needed because of an emergency medical condition;
 2. Non-emergency urgent care services are requested because the recipient's health would be endangered if he were required to travel, but only upon the explicit prior authorization of the MCC;
 3. The covered medical service would not be readily available within Tennessee if the enrollee was physically located in Tennessee at the time of need and the covered service is explicitly prior authorized by the enrollee's TennCare MCC; or
 4. The out-of-state provider is participating in the enrollee's MCC network.
 - (f) Investigative or experimental services or procedures including, but not limited to:
 1. Drug or device that lacks FDA approval except when medically necessary as defined by TennCare;
 2. Drug or device that lacks approval of facility's Institutional Review Board;
 3. Requested treatment that is the subject of Phase I or Phase II clinical trials or the investigational arm of Phase III clinical trials, or
 4. A requested service about which prevailing opinion among experts is that further study is required to determine safety, efficacy, or long-term clinical outcomes of requested service.

RULEMAKING HEARINGS

- (g) Services which are delivered in connection with, or required by, an item or service not covered by TennCare, including the transportation to receive such non-covered services, except that treatment of conditions resulting from the provision of non-covered services may be covered if medically necessary, notwithstanding the exclusions set out herein.
 - (h) Items or services furnished to provide a safe surrounding, including the charges for providing a surrounding free from exposure that can worsen the disease or injury.
 - (i) Non-emergency services that are ordered or furnished by an out-of-network provider and that have not been approved by the enrollee's MCC for out-of-network care.
 - (j) Services that are free to the public, with the exception of services delivered in the schools pursuant to the Individuals with Disabilities in Education Act (IDEA).
 - (k) Items or services ordered, prescribed, administered, supplied, or provided by an individual or entity that has been excluded from participation in the Medicaid program under the authority of the United States Department of Health and Human Services or the Bureau of TennCare.
 - (l) Items or services ordered, prescribed, administered, supplied, or provided by an individual or entity that is not licensed by the appropriate licensing board.
 - (m) Items or services outside the scope and/or authority of a provider's specialty and/or area of practice.
 - (n) Items or services to the extent that Medicare or a third party payer is legally responsible to pay or would have been legally responsible to pay except for the enrollee's or the treating provider's failure to comply with the requirements for coverage of such services.
 - (o) Medical services for inmates confined in a local, state, or federal prison, jail, or other penal or correctional facility, including a furlough from such facility.
- (2) Exception to General and Specific Exclusions: COST EFFECTIVE ALTERNATIVE. As approved by CMS and/or authorized by TSOP 032, each MCC has sole discretionary authority to provide certain cost effective alternatives when providing appropriate medically necessary care. These services are otherwise excluded and are not covered services unless the MCC has followed the procedures set forth in TSOP 032 and opts at its sole discretion to provide such requested item or service.
- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115(a) waiver program unless excepted by paragraph (2) herein. Some of these services may be covered outside TennCare under a Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.
- (a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21
 - 1. Air cleaners, purifiers, or HEPA filters
 - 2. Audiological therapy or training
 - 3. Augmentative communication devices _

RULEMAKING HEARINGS

4. Beds and bedding equipment as follows:
 - (i) Air flotation beds, powered, air fluidized beds (including Clinitron beds), water pressure mattress, or gel mattress

For persons age 21 and older: Not covered unless a member has both severely impaired mobility (i.e., unable to make independent changes in body position to alleviate pain or pressure) and any stage pressure ulcer on the trunk or pelvis combined with at least one of the following: impaired nutritional status, fecal or urinary incontinence, altered sensory perception, or compromised circulatory status.
 - (ii) Bead beds, or similar devices
 - (iii) Bed boards
 - (iv) Bedding and bed casings
 - (v) Ortho-prone beds
 - (vi) Oscillating beds
 - (vii) Pillows, hypoallergenic
 - (viii) Springbase beds
 - (ix) Vail beds, or similar bed_
5. Bed baths and Sitz baths
6. Chiropractor's services
7. Convalescent care
8. Cushions, pads, and mattresses as follows:
 - (i) Aquamatic K Pads
 - (ii) Elbow protectors
 - (iii) Heat and massage foam cushion pads
 - (iv) Heating pads
 - (v) Heel protectors
 - (vi) Lamb's wool pads
 - (vii) Steam packs
9. Diagnostic tests conducted solely for the purpose of evaluating the need for a service which is excluded from coverage under these rules.

RULEMAKING HEARINGS

10. Ear plugs

11. Floor standers

12. Food supplements and substitutes including formulas

For persons 21 years of age and older: Not covered, except that Parenteral Nutrition formulas, Enteral Nutrition formulas for tube feedings and phenylalanine-free formulas (not foods) used to treat PKU, as required by TCA 56-7-2505, are covered for adults. In addition, oral liquid nutrition may be covered when medically necessary for adults with swallowing or breathing disorders who are severely underweight (BMI<15 kg/m²) and physically incapable of otherwise consuming a sufficient intake of food to meet basic nutritional requirements.

13. Hearing aids, including the prescribing, fitting, or changing of hearing aids

14. Humidifiers (central or room) and dehumidifiers

15. Inpatient rehabilitation facility services

16. Medical supplies, over-the-counter, as follows:

- (i) Alcohol, rubbing
- (ii) Band-aids
- (iii) Cotton balls
- (iv) Eyewash
- (v) Peroxide
- (vi) Q-tips or cotton swabs

17. Methadone clinic services

18. Nutritional supplements and vitamins, over-the-counter, except that prenatal vitamins for pregnant women and folic acid for women of childbearing age are covered

19. Orthodontic services, except as defined in Rule 1200-13-13-.04(1)(b)6. or 1200-13-14-04(1)(b)6.

20. Certain pharmacy items as follows:

- (i) Agents when used for anorexia or weight loss
- (ii) Agents when used to promote fertility
- (iii) Agents when used for cosmetic purposes or hair growth
- (iv) Agents when used for the symptomatic relief of cough and colds
- (v) Agents when use to promote smoking cessation

RULEMAKING HEARINGS

- (vi) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee
- (vii) Nonprescription drugs
- (viii) Barbiturates
- (ix) Benzodiazepines
- 21. Purchase, repair, or replacement of materials or equipment when the reason for the purchase, repair, or replacement is the result of enrollee abuse
- 22. Purchase, repair, or replacement of materials or equipment that has been stolen or destroyed except when the following documentation is provided:
 - (i) Explanation of continuing medical necessity for the item, and
 - (ii) Explanation that the item was stolen or destroyed, and
 - (iii) Copy of police, fire department, or insurance report if applicable
- 23. Radial keratotomy
- 24. Reimbursement to a provider or enrollee for the replacement of a rented durable medical equipment (DME) item that is stolen or destroyed
- 25. Repair of DME items not covered by TennCare
- 26. Repair of DME items covered under the provider's or manufacturer's warranty
- 27. Repair of a rented DME item
- 28. Sitter services
- 29. Speech, language, and hearing services to address speech problems caused by mental, psychoneurotic, or personality disorders
- 30. Standing tables
- 31. Vision services for persons 21 years of age and older that are not needed to treat a systemic disease process including, but not limited to:
 - (i) Eyeglasses, sunglasses, and/or contact lenses for persons aged 21 and older, including eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, sunglasses, and/or contact lenses; procedures performed to determine the refractive state of the eye(s); one pair of cataract glasses or lenses is covered for adults following cataract surgery
 - (ii) LASIK

RULEMAKING HEARINGS

- (iii) Orthoptics
 - (iv) Vision perception training
 - (v) Vision therapy
- (b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.
- 1. Alcoholic beverages
 - 2. Animal therapy including, but not limited to:
 - (i) Dolphin therapy
 - (ii) Equine therapy
 - (iii) Hippo therapy
 - (iv) Pet therapy
 - 3. Art therapy
 - 4. Autopsy
 - 5. Bathtub equipment and supplies as follows:
 - (i) Paraffin baths
 - (ii) Sauna baths
 - 6. Beds and bedding equipment as follows:
 - (i) Adjust-a-Beds, lounge beds, or similar devices
 - (ii) Waterbeds
 - 7. Bioenergetic therapy
 - 8. Biofeedback
 - 9. Body adornment and enhancement services including, but not limited to:
 - (i) Body piercing,
 - (ii) Breast augmentation
 - (iii) Breast capsulectomy
 - (iv) Breast implant removal
 - (v) Ear piercing
 - (vi) Hair transplantation, and agents for hair growth

RULEMAKING HEARINGS

- (vii) Tattoos or removal of tattoos
- (viii) Tongue splitting or repair of tongue splitting
- (ix) Wigs or hairpieces
- 10. Breathing equipment-as follows:
 - (i) Intrapulmonary Percussive Ventilators (IPVs)
 - (ii) Spirometers, except for peak flow meters for medical management of asthma
 - (iii) Vaporizers
- 11. Carbon dioxide therapy
- 12. Care facilities or services, the primary purpose of which is non-medical, including, but not limited to:
 - (i) Day care
 - (ii) Evening care centers
 - (iii) Respite care, with the exception of crisis respite offered as a component of mental health crisis services
 - (iv) Rest cures
 - (v) Social or diversion services related to the judicial system
- 13. Carotid body tumor, excision of, as treatment for asthma
- 14. Chelation therapy, except for the treatment of heavy metal poisoning or secondary hemochromatosis in selected settings. Chelation therapy for treatment of arteriosclerosis or autism is not covered. Chelation therapy for asymptomatic individuals is not covered. In the case of lead poisoning, the lead levels must be extremely high. For children, a minimum level of 45 ug/dl is recommended. Because chelation therapy and its after-effects must be continuously monitored for possible adverse reactions, chelation therapy is covered only in inpatient or outpatient hospital settings, renal dialysis facilities, and skilled nursing facilities. It is not covered in an office setting, an ambulatory surgical center, or a home setting.
- 15. Clothing, including adaptive clothing
- 16. Cold therapy devices
- 17. Comfort and convenience items including, but not limited to:
 - (i) Corn plasters
 - (ii) Garter belts
 - (iii) Incontinence products (diapers/liners/underpads) for persons younger than 3 years of age-

RULEMAKING HEARINGS

- (iv) Support stockings, when light or medium weight or prescribed for relief of tired or aching legs or treatment of spider/varicose veins. Surgical weight stockings prescribed by a doctor or other qualified licensed health care practitioner for the treatment of chronic foot/ankle swelling, venous insufficiencies, or other medical conditions and thrombo-embolic deterrent support stockings for pre- and post-surgical procedures are covered as medically necessary.
- 18. Computers, personal, and peripherals including, but not limited to printers, modems, monitors, scanners, and software, including their use in conjunction with an Augmentative Communication Device
- 19. Cosmetic dentistry, cosmetic oral surgery, and cosmetic orthodontic services
- 20. Cosmetic prosthetic devices
- 21. Cosmetic surgery or surgical procedures primarily for the purpose of changing the appearance of any part of the body to improve appearance or self-esteem, including scar revision. The following services are not considered cosmetic services:
 - (i) Reconstructive surgery to correct the results of an injury or disease
 - (ii) Surgery to treat congenital defects (such as cleft lip and cleft palate) to restore normal bodily function
 - (iii) Surgery to reconstruct a breast after mastectomy that was done to treat a disease, or as a continuation of a staged reconstructive procedure
 - (iv) In accordance with Tennessee law, surgery of the non-diseased breast following mastectomy and reconstruction to create symmetrical appearance
 - (v) Surgery for the improvement of the functioning of a malformed body member
 - (vi) Reduction mammoplasty, when the minimum amount of breast material to be removed is equal to or greater than the 22nd percentile of the Schnur Sliding Scale based on the individual's body surface area.
- 22. Dance therapy
- 23. Dental services for adults age 21 and older
- 24. Services provided solely or primarily for educational purposes, including, but not limited to:
 - (i) Academic performance testing
 - (ii) Educational tests and training programs
 - (iii) Habilitation
 - (iv) Job training
 - (v) Lamaze classes

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- (vi) Lovaas therapy
 - (vii) Picture illustrations
 - (viii) Remedial education
 - (ix) Sign language instruction
 - (x) Special education
 - (xi) Tutors
25. Encounter groups or workshops
26. Environmental modifications including, but not limited to:
- (i) Air conditioners, central or unit
 - (ii) Micronaire environmentals, and similar devices
 - (iii) Pollen extractors
 - (iv) Portable room heaters
 - (v) Vacuum systems for dust filtering
 - (vi) Water purifiers
 - (vii) Water softeners
27. Exercise equipment including, but not limited to:
- (i) Exercise equipment
 - (ii) Exercycles (including cardiac use)
 - (iii) Functional electrical stimulation
 - (iv) Gravitronic traction devices
 - (v) Gravity guidance inversion boots
 - (vi) Parallel bars
 - (vii) Pulse tachometers
 - (viii) Tilt tables
 - (ix) Training balls
 - (x) Treadmill exercisers
 - (xi) Weighted quad boots

RULEMAKING HEARINGS

28. Food and food products (distinct from food supplements or substitutes, as defined in rule 1200-13-13-.10(3)(a)12. including but not limited to specialty food items for use in diets such as:
 - (i) Low-phenylalanine or phenylalanine-free;
 - (ii) Gluten-free;
 - (iii) Casein-free;
 - (iv) Ketogenic.
29. Grooming services including, but not limited to:
 - (i) Barber services
 - (ii) Beauty services
 - (iii) Electrolysis
 - (iv) Hairpieces or wigs
 - (v) Manicures
 - (vi) Pedicures
30. Hair analysis
31. Home modifications and items for use in the home
 - (i) Decks
 - (ii) Enlarged doorways
 - (iii) Environmental accessibility modifications such as grab bars and ramps
 - (iv) Fences
 - (v) Furniture, indoor or outdoor
 - (vi) Handrails
 - (vii) Meals
 - (viii) Overbed tables
 - (ix) Patios, sidewalks, driveways, and concrete slabs
 - (x) Plexiglass
 - (xi) Plumbing repairs
 - (xii) Porch gliders

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- (xiii) Rollabout chairs
 - (xiv) Room additions and room expansions
 - (xv) Telephone alert systems
 - (xvi) Telephone arms
 - (xvii) Telephone service in home
 - (xviii) Televisions
 - (xix) Tilt tables
 - (xx) Toilet trainers and potty chairs. Positioning commodes and toilet supports are covered as medically necessary.
 - (xxi) Utilities (gas, electric, water, etc.)
- 32. Homemaker services
 - 33. Hospital inpatient items that are not directly related to the treatment of an injury or illness (such as radios, TVs, movies, telephones, massage, guest beds, haircuts, hair styling, guest trays, etc.)
 - 34. Hotel charges, unless pre-approved in conjunction with a transplant or as part of a non-emergency transportation service
 - 35. Hypnosis or hypnotherapy
 - 36. Icterus index
 - 37. Infant/child car seats, except that adaptive car seats may be covered for a person with disabilities such as severe cerebral palsy, spina bifida, muscular dystrophy, and similar disorders who meets all of the following conditions:
 - (i) Cannot sit upright unassisted, and
 - (ii) Infant/child care seats are too small or do not provide adequate support, and
 - (iii) Safe automobile transport is not otherwise possible.
 - 38. Infertility or impotence services including, but not limited to:
 - (i) Artificial insemination services
 - (ii) Purchase of donor sperm and any charges for the storage of sperm
 - (iii) Purchase of donor eggs, and any charges associated with care of the donor required for donor egg retrievals or transfers of gestational carriers
 - (iv) Cryopreservation and storage of cryopreserved embryos

RULEMAKING HEARINGS

- (v) Services associated with a gestational carrier program (surrogate parenting) for the recipient or the gestational carrier
 - (vi) Fertility drugs
 - (vii) Home ovulation prediction kits
 - (viii) Services for couples in which one of the partners has had a previous sterilization procedure, with or without reversal
 - (ix) Reversal of sterilization procedures
 - (x) Any other service or procedure intended to create a pregnancy
 - (xi) Testing and/or treatment, including therapy, supplies, and counseling, for frigidity or impotence
39. Lamps such as:
- (i) Heating lamps
 - (ii) Lava lamps
 - (iii) Sunlamps
 - (iv) Ultraviolet lamps
40. Lifts as follows:
- (i) Automobile van lifts
 - (ii) Electric powered recliner, elevating seats, and lift chairs
 - (iii) Elevators
 - (iv) Overhead or ceiling lifts, ceiling track system lifts, or wall mounted lifts when installation would require significant structural modification and/or renovation to the dwelling (e.g., moving walls, enlarging passageways, strengthening ceilings and supports). The request for prior authorization must include a specific breakdown of equipment and installation costs, specifying all required structural modifications (however minor) and the cost associated thereto.
 - (v) Stairway lifts, stair glides, and platform lifts, including but not limited to Wheel-O-Vators
41. Ligation of mammary arteries, unilateral or bilateral
42. Megavitamin therapy
43. Motor vehicle parts and services including, but not limited to:
- (i) Automobile controls

RULEMAKING HEARINGS

- (ii) Automobile repairs or modifications
- 44. Music therapy
- 45. Nail analysis
- 46. Naturopathic services
- 47. Necropsy
- 48. Nerve stimulators, except for vagus nerve stimulators after conventional therapy has failed in treating partial onset of seizures
- 49. Organ and tissue transplants that have been determined experimental or investigational
- 50. Organ and tissue donor services provided in connection with organ or tissue transplants covered pursuant to Rule 1200-13-13-.04(1)(b)23., including, but not limited to:
 - (i) Transplants from a donor who is a living TennCare enrollee and the transplant is to a non-TennCare enrollee
 - (ii) Donor services other than the direct services related to organ procurement (such as, hospitalization, physician services, anesthesia)
 - (iii) Hotels, meals, or similar items provided outside the hospital setting for the donor
 - (iv) Any costs incurred by the next of kin of the donor
 - (v) Any services provided outside of any “bundled rates” after the donor is discharged from the hospital
- 51. Oxygen, except when provided under the order of a physician and administered under the direction of a physician
- 52. Oxygen, preset system (flow rate not adjustable)
- 53. Certain pharmacy items as follows: DESI, LTE, and IRS drugs
- 54. Play therapy
- 55. Primal therapy
- 56. Psychodrama
- 57. Psychogenic sexual dysfunction or transformation services
- 58. Purging
- 59. Recertification of patients in Level 1 and Level II Nursing Facilities
- 60. Recreational therapy

RULEMAKING HEARINGS

61. Religious counseling
62. Retreats for mental disorders
63. Rolfing
64. Routine health services which may be required by an employer; or by a facility where an individual lives, goes to school, or works; or by the enrollee's intent to travel
 - (i) Drug screenings
 - (ii) Employment and pre-employment physicals
 - (iii) Fitness to duty examinations
 - (iv) Immunizations related to travel or work
 - (v) Insurance physicals
 - (vi) Job related illness or injury covered by workers' compensation
65. Sensitivity training or workshops
66. Sensory integration therapy and equipment used in sensory integration therapy including, but not limited to:
 - (i) Ankle weights
 - (ii) Floor mats
 - (iii) Mini-trampolines
 - (iv) Poof chairs
 - (v) Sensory balls
 - (vi) Sky chairs
 - (vii) Suspension swings
 - (viii) Trampolines
 - (ix) Therapy balls
 - (x) Weighted blankets or weighted vests
67. Sensory stimulation services
68. Services provided by immediate relatives, i.e., a spouse, parent, grandparent, step-parent, child, grandchild, brother, sister, half brother, half sister, a spouse's parents or stepparents, or members of the recipient's household
69. Sex change or transformation surgery

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70. Sexual dysfunction or inadequacy services and medicine, including drugs for erectile dysfunctions and penile implant devices
71. Speech devices as follows:
 - (i) Phone mirror handivoice
 - (ii) Speech software
 - (iii) Speech teaching machines
72. Sphygmomanometers (blood pressure cuffs)
73. Stethoscopes
74. Supports
 - (i) Cervical pillows
 - (ii) Orthotrac pneumatic vests
75. Thermograms
76. Thermography
77. Time involved in completing necessary forms, claims, or reports
78. Tinnitus maskers
79. Toy equipment such as:

Flash switches (for toys)
80. Transportation costs as follows:
 - (i) Transportation to a provider who is outside the geographical access standards that the MCC is required to meet when a network provider is available within such geographical access standards or, in the case of Medicare beneficiaries, transportation to Medicare providers who are outside the geographical access standards of the TennCare program when there are Medicare providers available within those standards
 - (ii) Mileage reimbursement, car rental fees, or other reimbursement for use of a private vehicle unless prior authorized by the MCC in lieu of contracted transportation services
 - (iii) Transportation back to Tennessee from vacation or other travel out-of-state in order to access non-emergency covered services (unless authorized by the MCC)
81. Transsexual surgery

RULEMAKING HEARINGS

82. Weight loss or weight gain and physical fitness programs including, but not limited to:
- (i) Dietary programs of weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs or exercise programs. Food supplements will not be authorized for use in weight loss programs or for weight gain.
 - (ii) Health clubs, membership fees (e.g., YMCA)
 - (iii) Marathons, activity and entry fees
 - (iv) Swimming pools
83. Wheelchairs as follows:
- (i) Wheelchairs defined by CMS as power operated vehicles (POVs), namely, scooters and devices with three (3) or four (4) wheels that have tiller steering and limited seat modification capabilities (i.e., provide little or no back support). Powered wheelchairs, meaning four (4) wheeled, battery operated vehicles that provide back support and that are steered by an electronic device or joystick that controls direction and turning, are covered as medically necessary.
 - (ii) Standing wheelchairs
 - (iii) Stair-climbing wheelchairs
 - (iv) Recreational wheelchairs
84. Whirlpools and whirlpool equipment such as:
- (i) Action bath hydro massage
 - (ii) Aero massage
 - (iii) Aqua whirl
 - (iv) Aquasage pump, or similar devices
 - (v) Hand-D-Jets, or similar devices
 - (vi) Jacuzzis, or similar devices
 - (vii) Turbojets
 - (viii) Whirlpool bath equipment
 - (ix) Whirlpool pumps

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of April, 2006. (04-36)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. CD.T. on the 15th day June 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

Paragraph (5) of rule 1200-13-14-.01 Definitions (Application Fee) is deleted in its entirety and subsequent paragraphs renumbered accordingly.

Paragraph (17) renumbered as (16) of rule 1200-13-14-.01 Definitions is amended by deleting subparagraph (e) in its entirety so as amended the renumbered paragraph (16) shall read as follows:

(16) COMPLETED APPLICATION is an application where:

- (a) All required fields have been completed;
- (b) It is signed and dated by the applicant or the applicant's parent or guardian;
- (c) It included all supporting documentation required by TDHS or the Bureau to determine TennCare eligibility, technical and financial requirements as set out in these rules; and
- (d) It includes all supporting documentation required to prove TennCare Standard medical eligibility as set out in these rules.

Subparagraph (d) of paragraph (108) to be renumbered as paragraph (107) of rule 1200-13-14-.01 Definitions (TennCare Standard) is amended by deleting the last sentence so as amended subparagraph (d) shall read as follows:

- (d) Had Medicare as of December 31, 2001 (but not Medicaid) and were enrolled in the TennCare Program as of December 31, 2001, and who continue to meet the definition of "uninsurable" in effect at that time; or

Part 8. of subparagraph (a) of paragraph (2) of rule 1200-13-14-.02 Eligibility is amended by deleting the phrase "for the pharmacy benefit only, effective January 1, 2003," in the third sentence so as amended part 8. shall read as follows:

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8. Not be enrolled in, or eligible for participation in, Medicare, with the following exception: If the individual was enrolled in TennCare on December 31, 2001, had Medicare on December 31, 2001, and was not eligible for Medicaid. These enrollees will continue on TennCare Standard with uninterrupted coverage as long as they lack access to health insurance other than Medicare and they abide by all TennCare program requirements, such as payment of premiums. This is a “grandfathered” eligibility category for waiver transition purposes only. At such time as a person loses eligibility in this category, he will not be able to re-enroll in it.

Part 3. of subparagraph (c) of paragraph (3) of rule 1200-13-14-.02 Eligibility is deleted in its entirety and replaced with a new part 3. which shall read as follows:

3. Enrollees will be required to prove that s/he is uninsurable by providing proof of a qualifying medical condition or providing medical records for consideration by the Bureau.

Subparagraph (h), (i) and (k) of paragraph (1) of rule 1200-13-14-.03 Enrollment, Disenrollment Re-enrollment and Reassignment are deleted in their entirety and replaced with new subparagraphs (h), (i) and (k) which shall read as follows:

- (h) A person whose income is less than one hundred (100%) percent of the poverty level shall be permitted to enroll in TennCare Standard as a medically eligible person at any time with an effective date of the date of application.
- (i) A person whose income is at or greater than one hundred (100%) percent of the poverty level shall be permitted to enroll in TennCare Standard as a medically eligible only during a period of open enrollment, with an effective date of coverage consistent with the date of application which must be within the announced open enrollment period.
- (k) To qualify for TennCare Standard as medically eligible the applicant must complete a Medical Eligibility Determination packet. Packets will be sent to a qualified applicant who has indicated that s/he wishes to apply as a medically eligible person in his/her interview with the DHS caseworker. The applicant must meet the requirements specified in one of the following three (3) options. The applicant must submit the completed Medical Eligibility Determination packet, the required medical eligibility form(s) and supporting documentation as required in Option I, II, or III. The effective date of coverage shall be the date described in (h) or (i) above for persons applying during periods of closed enrollment with incomes less than one hundred (100%) percent of poverty.

The required information must be returned to the address specified within sixty (60) days from the date of the letter included in the packet. A medical eligibility form and documentation received after that time will not be processed as it exceeds the timely filing requirement. Packets which are not completed by the sixtieth (60th) day will be denied with a notice with appeal rights and the “good cause” reasons for not completing the process timely, which include:

1. The enrollee was sick.
2. Somebody in the enrollee’s immediate family was very sick.
3. The enrollee had a family emergency or tragedy.

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4. The enrollee could not get the medical records s/he needed from a provider. It was not his/her fault.
5. The enrollee asked for help because s/he has a disability. Neither the Bureau nor TDHS gave the help that the enrollee needed.
6. The enrollee asked for help because s/he does not speak English. Neither the Bureau nor TDHS gave the help that the enrollee needed.

Documentation required for a medically eligible determination.

7. Option I – a disease/condition as listed on the Medical Eligibility Determination form developed and periodically updated by the Bureau of TennCare.
 - (i) The applicant must submit a signed and completed Medical Eligibility Determination form. The form must also be signed by the applicant's physician attesting to the fact that the applicant has one or more qualifying medical disease/conditions on the list., and
 - (ii) The applicant must submit copies of medical records to support the disease/condition from the list of diseases/conditions of Option I of the Medical Eligibility Determination form. Medical records that substantiate conditions other than those on the Medical Eligibility Determination form are not required and should not be submitted.
8. Option II – Mental or Emotional Health Problem.
 - (i) The applicant must submit a signed and completed Medical Eligibility Determination form. The form must also be completed and signed by the individual's licensed mental health professional; and
 - (ii) The applicant must submit the following: a current level 1, 2, or 3 CRG assessment, medical records and the licensed mental health professional attestation form that supports the diagnosis, which is the basis of the assessment; or,
 - (iii) The applicant must submit the following: a current level 2 TPG assessment, medical records and the licensed mental health professional attestation form that supports the diagnosis, which is the basis of the assessment.
9. Option III –Submission of Medical Records.
 - (i) The applicant must submit a signed and completed Medical Eligibility Determination form; and
 - (ii) The applicant must sign a release for medical records, which will allow the Bureau at its discretion to obtain such records to substantiate the disease or medical/physical/behavioral condition.
 - (iii) The applicant must submit copies of medical records to support their medical or behavioral disease/ condition.

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Authority: *T.C.A. §§4-5-202, 4-5-203. 71-5-105, 71-5-109, Executive Order No. 23.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of April, 2006. (04-37)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. CD.T. on the 15th day June 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Department of Finance and Administration, Bureau of TennCare, to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings) to allow time for the Bureau of TennCare to determine how it may reasonably provide such aid or service. Initial contact may be made with the Bureau of TennCare's ADA Coordinator by mail at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or by telephone at (615) 507-6474 or 1-800-342-3145.

For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULE

Paragraph (1) of rule 1200-13-14-.03 Enrollment, Disenrollment, Re-enrollment and Reassignment is amended by adding a new subparagraph (n) which shall read as follows:

- (o) In the event an enrollee entering a MCO's plan is receiving medically necessary prenatal care the day before enrollment, the MCO shall be responsible for the costs of continuation of such medically necessary services, without any form of prior approval and without regard to whether such services are being provided within or outside the MCO's provider network until such time as the MCO can reasonably transfer the enrollee to a service and/or network provider without impeding service delivery that might be harmful to the enrollee's health.

In the event an enrollee entering the MCO's plan is in her second or third trimester of pregnancy and is receiving medically necessary prenatal care services the day before enrollment, the MCO shall be responsible for providing continued access to the provider (regardless of network affiliation) through the postpartum period. Reimbursement to an out-of-network provider shall be as set out in rule 1200-13-14-.08.

Authority: T.C.A. §§4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of April, 2006. (04-39)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF FINANCE AND ADMINISTRATION - 0620 BUREAU OF TENNCARE

There will be a hearing before the Commissioner to consider the promulgation of amendments of rules pursuant to Tennessee Code Annotated, 71-5-105 and 71-5-109. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Bureau of TennCare, 1st Floor East Conference Room, 310 Great Circle Road, Nashville, Tennessee 37243 at 9:00 a.m. CD.T. on the 15th day June 2006.

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For a copy of this notice of rulemaking hearing, contact George Woods at the Bureau of TennCare, 310 Great Circle Road, Nashville, Tennessee 37243 or call (615) 507-6446.

SUBSTANCE OF PROPOSED RULES

Part 6. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its enand replaced with a new part 6. which shall read as follows:tirety

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SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
<p>6. Dental Services [defined at 42 CFR §440.100].</p>	<p>Preventive, diagnostic, and treatment services covered as medically necessary.</p> <p>Dental services under EPSDT, including dental screens, are provided in accordance with the state's periodicity schedule as determined after consultation with recognized dental organizations and at other intervals as medically necessary.</p> <p>Orthodontic services must be prior approved and are limited to individuals under age 21 requiring these services for one of the following reasons:</p> <p>(1) because of a handicapping malocclusion or another developmental anomaly or injury resulting in severe misalignment or handicapping malocclusion of teeth. The Salzmann Index will be used to measure the severity of the malocclusion. A Salzmann score of 28 will be used as the threshold value for making orthodontic determinations of medical necessity. In addition, individual consideration will be applied for those unique orthodontic cases that may not be accounted for solely by the Salzmann Index;</p> <p>(2) following repair of an enrollee's cleft palate.</p> <p>Orthodontic treatment will not be authorized for cosmetic purposes. Orthodontic treatment will be paid for by TennCare only as long as the individual remains eligible for TennCare.</p> <p>If the orthodontic treatment plan is approved prior to the enrollee's attaining 20 ½ years of age, and treatment is initiated prior to the enrollee's attaining 21 years of age, such treatment may continue as long as the enrollee remains eligible for TennCare.</p> <p>The MCO is responsible for the provision of transportation to and from covered dental services, as well as the medical and anesthesia services related to the covered dental services.</p>	<p>Not covered, except for orthodontic treatment when an orthodontic treatment plan was approved prior to the enrollee's attaining 20 ½ years of age, and treatment was initiated prior to the enrollee's attaining 21 years of age; such treatment may continue as long as the enrollee remains eligible for TennCare.</p>

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Part 13. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new part 13. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
13. Inpatient Hospital Services [defined at 42 CFR §440.10].	Covered as medically necessary. Preadmission and concurrent reviews allowed.	Covered as medically necessary. Preadmission and concurrent reviews allowed.

Part 14. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new part 14. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
14. Inpatient Rehabilitation Facility Services.	See "Inpatient Hospital Services."	Not covered.

Part 23. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new part 23. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
23. Organ and Tissue Transplant Services and Donor Organ/Tissue Procurement Services [defined as the transfer of an organ or tissue from an individual to a TennCare enrollee].	Covered as medically necessary. Experimental or investigational transplants are not covered.	Covered as medically necessary when coverable by Medicare. Experimental or investigational transplants are not covered.

Part 38. of subparagraph (b) of paragraph (1) of rule 1200-13-14-.04 Covered Services is deleted in its entirety and replaced with a new part 38. which shall read as follows:

SERVICE	BENEFIT FOR PERSONS UNDER AGE 21	BENEFIT FOR PERSONS AGED 21 AND OLDER
38. Rehabilitation services	See "Occupational Therapy," "Physical Therapy," and "Speech Therapy," and "Inpatient Rehabilitation Facility Services."	See "Occupational Therapy," "Physical Therapy," and "Speech Therapy."

RULEMAKING HEARINGS

Rule 1200-13-14-.10 Exclusions is deleted in its entirety and replaced with a new rule 1200-13-14-.10 which shall read as follows:

1200-13-14-.10 EXCLUSIONS.

- (1) General exclusions. The following items and services shall not be considered covered services by TennCare:
 - (a) Provision of medical assistance which is outside the scope of benefits as defined in these rules.
 - (b) Provision of services to persons who are not enrolled in TennCare, either on the date the services are delivered or retroactively to the date the services are delivered, except for limited special appeal provisions pertaining to children who are placed in Youth Development Centers as defined in the Grier Revised Consent Decree, Section C.15.f. and pursuant to the DCS Interagency Agreement.
 - (c) Services for which there is no Federal Financial Participation (FFP).
 - (d) Services provided outside the United States or its territories.
 - (e) Services provided outside the geographic borders of Tennessee, including transportation to return to Tennessee to receive medical care except in the following circumstances:
 1. Emergency medical services are needed because of an emergency medical condition;
 2. Non-emergency urgent care services are requested because the recipient's health would be endangered if he were required to travel, but only upon the explicit prior authorization of the MCC;
 3. The covered medical service would not be readily available within Tennessee if the enrollee was physically located in Tennessee at the time of need and the covered service is explicitly prior authorized by the enrollee's TennCare MCC; or
 4. The out-of-state provider is participating in the enrollee's MCC network.
 - (f) Investigative or experimental services or procedures including, but not limited to:
 1. Drug or device that lacks FDA approval except when medically necessary as defined by TennCare;
 2. Drug or device that lacks approval of facility's Institutional Review Board;
 3. Requested treatment that is the subject of Phase I or Phase II clinical trials or the investigational arm of Phase III clinical trials, or
 4. A requested service about which prevailing opinion among experts is that further study is required to determine safety, efficacy, or long-term clinical outcomes of requested service.

RULEMAKING HEARINGS

- (g) Services which are delivered in connection with, or required by, an item or service not covered by TennCare, including the transportation to receive such non-covered services, except that treatment of conditions resulting from the provision of non-covered services may be covered if medically necessary, notwithstanding the exclusions set out herein.
 - (h) Items or services furnished to provide a safe surrounding, including the charges for providing a surrounding free from exposure that can worsen the disease or injury.
 - (i) Non-emergency services that are ordered or furnished by an out-of-network provider and that have not been approved by the enrollee's MCC for out-of-network care.
 - (j) Services that are free to the public, with the exception of services delivered in the schools pursuant to the Individuals with Disabilities in Education Act (IDEA).
 - (k) Items or services ordered, prescribed, administered, supplied, or provided by an individual or entity that has been excluded from participation in the Medicaid program under the authority of the United States Department of Health and Human Services or the Bureau of TennCare.
 - (l) Items or services ordered, prescribed, administered, supplied, or provided by an individual or entity that is not licensed by the appropriate licensing board.
 - (m) Items or services outside the scope and/or authority of a provider's specialty and/or area of practice.
 - (n) Items or services to the extent that Medicare or a third party payer is legally responsible to pay or would have been legally responsible to pay except for the enrollee's or the treating provider's failure to comply with the requirements for coverage of such services.
 - (o) Medical services for inmates confined in a local, state, or federal prison, jail, or other penal or correctional facility, including a furlough from such facility.
- (2) Exception to General and Specific Exclusions: COST EFFECTIVE ALTERNATIVE. As approved by CMS and/or authorized by TSOP 032, each MCC has sole discretionary authority to provide certain cost effective alternatives when providing appropriate medically necessary care. These services are otherwise excluded and are not covered services unless the MCC has followed the procedures set forth in TSOP 032 and opts at its sole discretion to provide such requested item or service.
- (3) Specific exclusions. The following services, products, and supplies are specifically excluded from coverage under the TennCare Section 1115(a) waiver program unless excepted by paragraph (2) herein. Some of these services may be covered outside TennCare under a Home and Community Based Services waiver when provided as part of an approved plan of care, in accordance with the appropriate TennCare Home and Community Based Services rule.
- (a) Services, products, and supplies that are specifically excluded from coverage except as medically necessary for children under the age of 21
 - 1. Air cleaners, purifiers, or HEPA filters
 - 2. Audiological therapy or training
 - 3. Augmentative communication devices _

RULEMAKING HEARINGS

4. Beds and bedding equipment as follows:
 - (i) Air flotation beds, powered, air fluidized beds (including Clinitron beds), water pressure mattress, or gel mattress

For persons age 21 and older: Not covered unless a member has both severely impaired mobility (i.e., unable to make independent changes in bodyposition to alleviate pain or pressure) and any stage pressure ulcer on the trunk or pelvis combined with at least one of the following: impaired nutritional status, fecal or urinary incontinence, altered sensory perception, or compromised circulatory status.
 - (ii) Bead beds, or similar devices
 - (iii) Bed boards
 - (iv) Bedding and bed casings
 - (v) Ortho-prone beds
 - (vi) Oscillating beds
 - (vii) Pillows, hypoallergenic
 - (viii) Springbase beds
 - (ix) Vail beds, or similar bed_
5. Bed baths and Sitz baths
6. Chiropractor's services
7. Convalescent care
8. Cushions, pads, and mattresses as follows:
 - (i) Aquamatic K Pads
 - (ii) Elbow protectors
 - (iii) Heat and massage foam cushion pads
 - (iv) Heating pads
 - (v) Heel protectors
 - (vi) Lamb's wool pads
 - (vii) Steam packs
9. Diagnostic tests conducted solely for the purpose of evaluating the need for a service which is excluded from coverage under these rules.

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10. Ear plugs
11. Floor standers
12. Food supplements and substitutes including formulas

For persons 21 years of age and older: Not covered, except that Parenteral Nutrition formulas, Enteral Nutrition formulas for tube feedings and phenylalanine-free formulas (not foods) used to treat PKU, as required by TCA 56-7-2505, are covered for adults. In addition, oral liquid nutrition may be covered when medically necessary for adults with swallowing or breathing disorders who are severely underweight (BMI<15 kg/m²) and physically incapable of otherwise consuming a sufficient intake of food to meet basic nutritional requirements.

13. Hearing aids, including the prescribing, fitting, or changing of hearing aids
14. Humidifiers (central or room) and dehumidifiers
15. Inpatient rehabilitation facility services
16. Medical supplies, over-the-counter, as follows:
 - (i) Alcohol, rubbing
 - (ii) Band-aids
 - (iii) Cotton balls
 - (iv) Eyewash
 - (v) Peroxide
 - (vi) Q-tips or cotton swabs
17. Methadone clinic services
18. Nutritional supplements and vitamins, over-the-counter, except that prenatal vitamins for pregnant women and folic acid for women of childbearing age are covered
19. Orthodontic services, except as defined in Rule 1200-13-13-.04(1)(b)6. or 1200-13-14-04(1)(b)6.
20. Certain pharmacy items as follows:
 - (i) Agents when used for anorexia or weight loss
 - (ii) Agents when used to promote fertility
 - (iii) Agents when used for cosmetic purposes or hair growth
 - (iv) Agents when used for the symptomatic relief of cough and colds

RULEMAKING HEARINGS

- (v) Agents when use to promote smoking cessation
 - (vi) Covered outpatient drugs which the manufacturer seeks to require as a condition of sale that associated tests or monitoring services be purchased exclusively from the manufacturer or its designee
 - (vii) Nonprescription drugs
 - (viii) Barbiturates
 - (ix) Benzodiazepines
21. Purchase, repair, or replacement of materials or equipment when the reason for the purchase, repair, or replacement is the result of enrollee abuse
 22. Purchase, repair, or replacement of materials or equipment that has been stolen or destroyed except when the following documentation is provided:
 - (i) Explanation of continuing medical necessity for the item, and
 - (ii) Explanation that the item was stolen or destroyed, and
 - (iii) Copy of police, fire department, or insurance report if applicable
 23. Radial keratotomy
 24. Reimbursement to a provider or enrollee for the replacement of a rented durable medical equipment (DME) item that is stolen or destroyed
 25. Repair of DME items not covered by TennCare
 26. Repair of DME items covered under the provider's or manufacturer's warranty
 27. Repair of a rented DME item
 28. Sitter services
 29. Speech, language, and hearing services to address speech problems caused by mental, psychoneurotic, or personality disorders
 30. Standing tables
 31. Vision services for persons 21 years of age and older that are not needed to treat a systemic disease process including, but not limited to:
 - (i) Eyeglasses, sunglasses, and/or contact lenses for persons aged 21 and older, including eye examinations for the purpose of prescribing, fitting, or changing eyeglasses, sunglasses, and/or contact lenses; procedures performed to determine the refractive state of the eye(s); one pair of cataract glasses or lenses is covered for adults following cataract surgery
 - (ii) LASIK

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- (iii) Orthoptics
 - (iv) Vision perception training
 - (v) Vision therapy
- (b) Services, products, and supplies that are specifically excluded from coverage under the TennCare program.
 - 1. Alcoholic beverages
 - 2. Animal therapy including, but not limited to:
 - (i) Dolphin therapy
 - (ii) Equine therapy
 - (iii) Hippo therapy
 - (iv) Pet therapy
 - 3. Art therapy
 - 4. Autopsy
 - 5. Bathtub equipment and supplies as follows:
 - (i) Paraffin baths
 - (ii) Sauna baths
 - 6. Beds and bedding equipment as follows:
 - (i) Adjust-a-Beds, lounge beds, or similar devices
 - (ii) Waterbeds
 - 7. Bioenergetic therapy
 - 8. Biofeedback
 - 9. Body adornment and enhancement services including, but not limited to:
 - (i) Body piercing,
 - (ii) Breast augmentation
 - (iii) Breast capsulectomy
 - (iv) Breast implant removal
 - (v) Ear piercing

RULEMAKING HEARINGS

- (vi) Hair transplantation, and agents for hair growth
 - (vii) Tattoos or removal of tattoos
 - (viii) Tongue splitting or repair of tongue splitting
 - (ix) Wigs or hairpieces
10. Breathing equipment-as follows:
- (i) Intrapulmonary Percussive Ventilators (IPVs)
 - (ii) Spirometers, except for peak flow meters for medical management of asthma
 - (iii) Vaporizers
11. Carbon dioxide therapy
12. Care facilities or services, the primary purpose of which is non-medical, including, but not limited to:
- (i) Day care
 - (ii) Evening care centers
 - (iii) Respite care, with the exception of crisis respite offered as a component of mental health crisis services
 - (iv) Rest cures
 - (v) Social or diversion services related to the judicial system
13. Carotid body tumor, excision of, as treatment for asthma
14. Chelation therapy, except for the treatment of heavy metal poisoning or secondary hemochromatosis in selected settings. Chelation therapy for treatment of arteriosclerosis or autism is not covered. Chelation therapy for asymptomatic individuals is not covered. In the case of lead poisoning, the lead levels must be extremely high. For children, a minimum level of 45 ug/dl is recommended. Because chelation therapy and its after-effects must be continuously monitored for possible adverse reactions, chelation therapy is covered only in inpatient or outpatient hospital settings, renal dialysis facilities, and skilled nursing facilities. It is not covered in an office setting, an ambulatory surgical center, or a home setting.
15. Clothing, including adaptive clothing
16. Cold therapy devices
17. Comfort and convenience items including, but not limited to:
- (i) Corn plasters
 - (ii) Garter belts

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- (iii) Incontinence products (diapers/liners/underpads) for persons younger than 3 years of age-
 - (iv) Support stockings, when light or medium weight or prescribed for relief of tired or aching legs or treatment of spider/varicose veins. Surgical weight stockings prescribed by a doctor or other qualified licensed health care practitioner for the treatment of chronic foot/ankle swelling, venous insufficiencies, or other medical conditions and thrombo-embolic deterrent support stockings for pre- and post-surgical procedures are covered as medically necessary.
- 18. Computers, personal, and peripherals including, but not limited to printers, modems, monitors, scanners, and software, including their use in conjunction with an Augmentative Communication Device
- 19. Cosmetic dentistry, cosmetic oral surgery, and cosmetic orthodontic services
- 20. Cosmetic prosthetic devices
- 21. Cosmetic surgery or surgical procedures primarily for the purpose of changing the appearance of any part of the body to improve appearance or self-esteem, including scar revision. The following services are not considered cosmetic services:
 - (i) Reconstructive surgery to correct the results of an injury or disease
 - (ii) Surgery to treat congenital defects (such as cleft lip and cleft palate) to restore normal bodily function
 - (iii) Surgery to reconstruct a breast after mastectomy that was done to treat a disease, or as a continuation of a staged reconstructive procedure
 - (iv) In accordance with Tennessee law, surgery of the non-diseased breast following mastectomy and reconstruction to create symmetrical appearance
 - (v) Surgery for the improvement of the functioning of a malformed body member
 - (vi) Reduction mammoplasty, when the minimum amount of breast material to be removed is equal to or greater than the 22nd percentile of the Schnur Sliding Scale based on the individual's body surface area.
- 22. Dance therapy
- 23. Dental services for adults age 21 and older
- 24. Services provided solely or primarily for educational purposes, including, but not limited to:
 - (i) Academic performance testing
 - (ii) Educational tests and training programs
 - (iii) Habilitation

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- (iv) Job training
 - (v) Lamaze classes
 - (vi) Lovaas therapy
 - (vii) Picture illustrations
 - (viii) Remedial education
 - (ix) Sign language instruction
 - (x) Special education
 - (xi) Tutors
25. Encounter groups or workshops
26. Environmental modifications including, but not limited to:
- (i) Air conditioners, central or unit
 - (ii) Micronaire environmentals, and similar devices
 - (iii) Pollen extractors
 - (iv) Portable room heaters
 - (v) Vacuum systems for dust filtering
 - (vi) Water purifiers
 - (vii) Water softeners
27. Exercise equipment including, but not limited to:
- (i) Exercise equipment
 - (ii) Exercycles (including cardiac use)
 - (iii) Functional electrical stimulation
 - (iv) Gravitronic traction devices
 - (v) Gravity guidance inversion boots
 - (vi) Parallel bars
 - (vii) Pulse tachometers
 - (viii) Tilt tables

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- (ix) Training balls
 - (x) Treadmill exercisers
 - (xi) Weighted quad boots
28. Food and food products (distinct from food supplements or substitutes, as defined in rule 1200-13-14-.10(3)(a)12. including but not limited to specialty food items for use in diets such as:
- (i) Low-phenylalanine or phenylalanine-free;
 - (ii) Gluten-free;
 - (iii) Casein-free;
 - (iv) Ketogenic.
29. Grooming services including, but not limited to:
- (i) Barber services
 - (ii) Beauty services
 - (iii) Electrolysis
 - (iv) Hairpieces or wigs
 - (v) Manicures
 - (vi) Pedicures
30. Hair analysis
31. Home modifications and items for use in the home
- (i) Decks
 - (ii) Enlarged doorways
 - (iii) Environmental accessibility modifications such as grab bars and ramps
 - (iv) Fences
 - (v) Furniture, indoor or outdoor
 - (vi) Handrails
 - (vii) Meals
 - (viii) Overbed tables

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- (ix) Patios, sidewalks, driveways, and concrete slabs
 - (x) Plexiglass
 - (xi) Plumbing repairs
 - (xii) Porch gliders
 - (xiii) Rollabout chairs
 - (xiv) Room additions and room expansions
 - (xv) Telephone alert systems
 - (xvi) Telephone arms
 - (xvii) Telephone service in home
 - (xviii) Televisions
 - (xix) Tilt tables
 - (xx) Toilet trainers and potty chairs. Positioning commodes and toilet supports are covered as medically necessary.
 - (xxi) Utilities (gas, electric, water, etc.)
- 32. Homemaker services
 - 33. Hospital inpatient items that are not directly related to the treatment of an injury or illness (such as radios, TVs, movies, telephones, massage, guest beds, haircuts, hair styling, guest trays, etc.)
 - 34. Hotel charges, unless pre-approved in conjunction with a transplant or as part of a non-emergency transportation service
 - 35. Hypnosis or hypnotherapy
 - 36. Icterus index
 - 37. Infant/child car seats, except that adaptive car seats may be covered for a person with disabilities such as severe cerebral palsy, spina bifida, muscular dystrophy, and similar disorders who meets all of the following conditions:
 - (i) Cannot sit upright unassisted, and
 - (ii) Infant/child care seats are too small or do not provide adequate support, and
 - (iii) Safe automobile transport is not otherwise possible.
 - 38. Infertility or impotence services including, but not limited to:

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- (i) Artificial insemination services
- (ii) Purchase of donor sperm and any charges for the storage of sperm
- (iii) Purchase of donor eggs, and any charges associated with care of the donor required for donor egg retrievals or transfers of gestational carriers
- (iv) Cryopreservation and storage of cryopreserved embryos
- (v) Services associated with a gestational carrier program (surrogate parenting) for the recipient or the gestational carrier
- (vi) Fertility drugs
- (vii) Home ovulation prediction kits
- (viii) Services for couples in which one of the partners has had a previous sterilization procedure, with or without reversal
- (ix) Reversal of sterilization procedures
- (x) Any other service or procedure intended to create a pregnancy
- (xi) Testing and/or treatment, including therapy, supplies, and counseling, for frigidity or impotence

39. Lamps such as:

- (i) Heating lamps
- (ii) Lava lamps
- (iii) Sunlamps
- (iv) Ultraviolet lamps

40. Lifts as follows:

- (i) Automobile van lifts
- (ii) Electric powered recliner, elevating seats, and lift chairs
- (iii) Elevators
- (iv) Overhead or ceiling lifts, ceiling track system lifts, or wall mounted lifts when installation would require significant structural modification and/or renovation to the dwelling (e.g., moving walls, enlarging passageways, strengthening ceilings and supports). The request for prior authorization must include a specific breakdown of equipment and installation costs, specifying all required structural modifications (however minor) and the cost associated thereto.
- (v) Stairway lifts, stair glides, and platform lifts, including but not limited to Wheel-O-Vators

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41. Ligation of mammary arteries, unilateral or bilateral
42. Megavitamin therapy
43. Motor vehicle parts and services including, but not limited to:
 - (i) Automobile controls
 - (ii) Automobile repairs or modifications
44. Music therapy
45. Nail analysis
46. Naturopathic services
47. Necropsy
48. Nerve stimulators, except for vagus nerve stimulators after conventional therapy has failed in treating partial onset of seizures
49. Organ and tissue transplants that have been determined experimental or investigational
50. Organ and tissue donor services provided in connection with organ or tissue transplants covered pursuant to Rule 1200-13-14-.04(1)(b)23., including, but not limited to:
 - (i) Transplants from a donor who is a living TennCare enrollee and the transplant is to a non-TennCare enrollee
 - (ii) Donor services other than the direct services related to organ procurement (such as, hospitalization, physician services, anesthesia)
 - (iii) Hotels, meals, or similar items provided outside the hospital setting for the donor
 - (iv) Any costs incurred by the next of kin of the donor
 - (v) Any services provided outside of any "bundled rates" after the donor is discharged from the hospital
51. Oxygen, except when provided under the order of a physician and administered under the direction of a physician
52. Oxygen, preset system (flow rate not adjustable)
53. Certain pharmacy items as follows: DESI, LTE, and IRS drugs
54. Play therapy
55. Primal therapy

RULEMAKING HEARINGS

56. Psychodrama
57. Psychogenic sexual dysfunction or transformation services
58. Purging
59. Recertification of patients in Level 1 and Level II Nursing Facilities
60. Recreational therapy
61. Religious counseling
62. Retreats for mental disorders
63. Rolfing
64. Routine health services which may be required by an employer; or by a facility where an individual lives, goes to school, or works; or by the enrollee's intent to travel
 - (i) Drug screenings
 - (ii) Employment and pre-employment physicals
 - (iii) Fitness to duty examinations
 - (iv) Immunizations related to travel or work
 - (v) Insurance physicals
 - (vi) Job related illness or injury covered by workers' compensation
65. Sensitivity training or workshops
66. Sensory integration therapy and equipment used in sensory integration therapy including, but not limited to:
 - (i) Ankle weights
 - (ii) Floor mats
 - (iii) Mini-trampolines
 - (iv) Poof chairs
 - (v) Sensory balls
 - (vi) Sky chairs
 - (vii) Suspension swings
 - (viii) Trampolines

RULEMAKING HEARINGS

- (ix) Therapy balls
- (x) Weighted blankets or weighted vests
- 67. Sensory stimulation services
- 68. Services provided by immediate relatives, i.e., a spouse, parent, grandparent, step-parent, child, grandchild, brother, sister, half brother, half sister, a spouse's parents or stepparents, or members of the recipient's household
- 69. Sex change or transformation surgery
- 70. Sexual dysfunction or inadequacy services and medicine, including drugs for erectile dysfunctions and penile implant devices
- 71. Speech devices as follows:
 - (i) Phone mirror handivoice
 - (ii) Speech software
 - (iii) Speech teaching machines
- 72. Sphygmomanometers (blood pressure cuffs)
- 73. Stethoscopes
- 74. Supports
 - (i) Cervical pillows
 - (ii) Orthotrac pneumatic vests
- 75. Thermograms
- 76. Thermography
- 77. Time involved in completing necessary forms, claims, or reports
- 78. Tinnitus maskers
- 79. Toy equipment such as:
 - Flash switches (for toys)
- 80. Transportation costs as follows:
 - (i) Transportation to a provider who is outside the geographical access standards that the MCC is required to meet when a network provider is available within such geographical access standards or, in the case of Medicare beneficiaries, transportation to Medicare providers who are outside the geographical access standards of the TennCare program when there are Medicare providers available within those standards

RULEMAKING HEARINGS

- (ii) Mileage reimbursement, car rental fees, or other reimbursement for use of a private vehicle unless prior authorized by the MCC in lieu of contracted transportation services
 - (iii) Transportation back to Tennessee from vacation or other travel out-of-state in order to access non-emergency covered services (unless authorized by the MCC)
- 81. Transsexual surgery
- 82. Weight loss or weight gain and physical fitness programs including, but not limited to:
 - (i) Dietary programs of weight loss programs, including, but not limited to, Optifast, Nutrisystem, and other similar programs or exercise programs. Food supplements will not be authorized for use in weight loss programs or for weight gain.
 - (ii) Health clubs, membership fees (e.g., YMCA)
 - (iii) Marathons, activity and entry fees
 - (iv) Swimming pools
- 83. Wheelchairs as follows:
 - (i) Wheelchairs defined by CMS as power operated vehicles (POVs), namely, scooters and devices with three (3) or four (4) wheels that have tiller steering and limited seat modification capabilities (i.e., provide little or no back support). Powered wheelchairs, meaning four (4) wheeled, battery operated vehicles that provide back support and that are steered by an electronic device or joystick that controls direction and turning, are covered as medically necessary.
 - (ii) Standing wheelchairs
 - (iii) Stair-climbing wheelchairs
 - (iv) Recreational wheelchairs
- 84. Whirlpools and whirlpool equipment such as:
 - (i) Action bath hydro massage
 - (ii) Aero massage
 - (iii) Aqua whirl
 - (iv) Aquasage pump, or similar devices
 - (v) Hand-D-Jets, or similar devices
 - (vi) Jacuzzis, or similar devices

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- (vii) Turbojets
- (viii) Whirlpool bath equipment
- (ix) Whirlpool pumps

Authority: *T.C.A. 4-5-202, 4-5-203, 71-5-105, 71-5-109, Executive Order No. 23.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of April, 2006. (04-38)

RULEMAKING HEARINGS

THE TENNESSEE DEPARTMENT OF HEALTH - 1200 DIVISION OF EMERGENCY MEDICAL SERVICES

There will be a hearing before the Division of Emergency Medical Services to consider the promulgation of amendments of rules pursuant to T.C.A. §§ 68-140-201, 68-140-203, 68-140-204, 68-140-205, 68-140-206, 68-140-207, 68-140-208, 68-140-502, 68-140-504, 68-140-505, and 68-140-513. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in conference room 133 of the Cordell Hull Building, First Floor, located at 425 Fifth Avenue North, Nashville, Tennessee at 10:30 a.m., Central Daylight Time, on the 16th day of June, 2006.

Any individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Department of Health, Division of Emergency Medical Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date or the date the party plans to review such filings, to allow time for the Division of Emergency Medical Services to determine how it may reasonably provide such aid or service. Initial contact may be made with Richard F. Land, Director of Ambulance Service Licensure and Regulation, Division of Emergency Medical Services, Cordell Hull Building, First Floor, 425 Fifth Avenue, North, Nashville, TN 37247-0701, 615-741-2584.

For a copy of the entire text of the notice of rulemaking, contact Richard F. Land, Director of Ambulance Service Licensure and Regulation, Division of Emergency Medical Services, Cordell Hull Building, First Floor, 425 Fifth Avenue, North, Nashville, TN 37247-0701, 615-741-2584.

SUBSTANCE OF PROPOSED RULES

CHAPTER 1200-12-1

AMENDMENTS

Subparagraph (f) paragraph (3) of Rule 1200-12-1-.02 Ambulance Safety Standards, relative to Ambulance Radio Requirements is amended by deleting the existing language of part 1 in its entirety, and substituting instead the following language, so that as amended part 1 shall read:

1. Two-way Radio (Mobile).

Mobile radio equipment shall include VHF capabilities at a minimum, as established in Rule 1200-12-1-.08 (EMS Telecommunications), or means of alternative compliance as established in Rule 1200-12-1-.08. Radio control functions for the VHF and dispatch radio shall be accessible to the vehicle operator. The medical communication radio (or radio controls) shall be available in the patient compartment and comply with the respective regional frequency use plans and radio standards as published in the State EMS Telecommunications Plan.

Rule 1200-12-1-.08 Emergency Medical Services Telecommunications is amended by deleting paragraphs (2), (4), and (5) in their entirety, and substituting instead the following language, so that as amended paragraphs (2), (4), and (5) shall read:

- (2) EMS Telecommunications Resource Coordination Centers, also known as Regional Medical Communications Centers, (RMCC), shall be designated by the Director of the Division of Emergency Medical Services for each emergency medical services area of the state, and shall be charged with the following responsibilities:

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- (a) The RMCC shall be operational 24 hours daily and shall coordinate emergency medical services traffic, as required.
 - 1. The RMCC shall coordinate radio communications between ambulances and receiving hospitals and adjacent regional centers;
 - 2. Coordinate emergency medical consultation services for hospitals and ambulance services;
 - 3. Monitor the status and availability of hospitals and special services throughout the region;
 - 4. Conduct routine communications checks and systems tests with systems participants; and,
 - 5. Assist in public health, injury, and disease surveillance programs in association with the Department of Health.
- (b) The RMCC shall monitor and respond to all EMS telecommunications so directed to the regional center for those messages originating on the designated Tennessee EMS radio frequencies in the very high frequency (VHF) high band spectrum. Where applicable, the RCC shall also:
 - 1. assign the UHF MED channels for real-time use by ambulances within two-way radio range of the center's equipment, assuring an interference-free MED channel for ambulances during multiple or simultaneous runs; and,
 - 2. monitor and respond to EMS units as enabled on 800 MHz radio systems; and,
 - 3. shall record all EMS message traffic by date and 2400 hour time and retain the recordings for a minimum of one (1) year.
- (c) The RMCC will maintain and coordinate its activities through a regional committee to promote and conduct quality improvement programs and review, and to guide plans and procedures for daily operations,. This committee shall coordinate development of communications procedures and other regional emergency medical services system planning as necessary for disasters and mass casualty incidents, including specialty care for trauma, burn, cardiac, stroke, and pediatric patients.
 - 1. The committee shall be organized of representatives within the region designated from the following provider agencies and officials:
 - (i) Each hospital with an active emergency department;
 - (ii) Each primary provider of emergency ambulance services, each helicopter air ambulance service, and those private ambulance services with more than ten (10) permitted ambulances;
 - (iii) Regional Emergency Medical Services Consultant, Department of Health;
 - (iv) Regional Hospital Coordinator, Department of Health; and,

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- (v) At least one EMS Medical Director affiliated with an EMS primary provider.
- 2. The committee shall elect from its membership of designated representatives, an executive committee and officers to preside at and record the business of the committee, including a chairman, vice-chairman, and secretary, and to function as necessary between the regular meetings of the committee.
- 3. The secretary of the committee shall keep minutes of the committee meetings, which shall be available for public inspection, except for those quality improvement oversight activities that are otherwise exempted by law.
- 4. Any committee member may place items before the committee for discussion.
- (d) The RMCC shall conduct a continuing education program on its communication equipment, assuring that all employees, including supervisory personnel, can function at the telecommunicator position(s).
- (e) The RMCC will participate with dispatcher and telecommunicator training and promote training for all personnel within the region involved in EMS radio communications.
- (f) The RMCC, within the geographical area of responsibility, shall serve as the coordination point in situations requiring added EMS resources, over those locally available. During a disaster or multiple casualty incident local agencies shall notify the RMCC of changes in status and the need for added resources and upon such notification:
 - 1. The RMCC shall receive scene reports and staging area information, and coordinate communications with the local dispatch center or incident command liaison; and
 - 2. Coordinate emergency medical services resources responding to the incident, including ground and air ambulances, specialty teams, and state officials; and
 - 3. Notify hospitals in accordance with the anticipated system demands and planned activities and allocate patients among hospitals in accordance with the patients' condition, bed availability, and clinical specialty capabilities.
 - 4. The RMCC will communicate situational information to the health department and emergency management officials, and will maintain liaison with the emergency service coordinators at the State Emergency Operations Center, and other officials as identified by the Department of Health or the Tennessee Emergency Management Agency.
- (g) The RMCC shall operate with professional radio operator techniques at all times, to monitor and promote system discipline, correct faulty operating practices within the system, and report any violations of system discipline to the regional EMS Consultant for appropriate action.
- (h) The RMCC shall cooperate with radio repair services during their performance of maintenance on EMS radio equipment.
- (i) The RMCC shall maintain a current and accurate index of Federal Communications Commission (FCC) assigned call signs and commercial telephone numbers of all regional ambulance services and medical facilities participating in the EMS radio communications system and shall assure adherence to applicable Tennessee statutes and rules and regulations of the FCC on the part of all regional participants. All local EMS agencies and participants shall notify the RCC of any changes of radio call signs and telephone numbers.

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- (j) The RMCC shall maintain a constant status of emergency readiness, assuring that all employees are knowledgeable of the procedures for emergency operation and are familiar with the operation, capability and limitation of equipment. Centers maintaining controlled entrance to their facilities will provide the regional EMS Consultant with a personal method of access, and will immediately notify that Consultant on learning of an occurrence of a natural or man-made disaster or mass casualty incident that may tax the resources within the region.
 - (k) Only one RMCC shall be designated in each region.
- (4) EMS Telecommunications Operating Techniques - All emergency medical services entities participating in the Tennessee EMS Telecommunications System shall conform to the radio operation techniques approved by the Division of Emergency Medical Services.
- (5) EMS Telecommunications System Access - Access to the statewide emergency medical services telecommunications system, including the use of selective signals or tones, shall comply with technical specifications developed or approved by the Division of Emergency Medical Services, and correspond to the procedures outlined in the State EMS Telecommunications Plan. Emergency medical service entities in the statewide network shall meet the following requirements:
- (a) Each ambulance permitted to transact business in the State of Tennessee and each emergency ambulance dispatching center shall have two-way radio capability with the following devices and frequencies as addressed in either part 1 or part 2 of this rule.
 - 1. A Very High Frequency radio on the frequency of 155.205 MHz with approved equipment utilizing Digital coded squelch of 205, not later than six months following the effective date of this rule.
 - (i) Each entity shall have a valid radio station license or letter providing frequency use agreement from a radio station license issued by the Federal Communications Commission (FCC) for all transmitting equipment on the frequency used; or,
 - (ii) Those services having a FCC license for mobile operation only on 155.205 MHz shall have a written agreement with a nearby service operating a properly licensed base station on this frequency, such agreement extending cooperative communications to radio equipped vehicles of the service.
 - (iii) The frequency 155.205 MHz shall be used for ambulance mutual aid activities.
 - 2. Those counties with a population of more than 250,000 people according to the 2000 U.S. Census and that rely upon an 800 MHz radio system for public safety communications may apply to use an alternative communications system to accomplish the objectives of this rule, as detailed in paragraphs (a),(b), and (c). The alternative must provide for ambulance to ambulance and ambulance to hospital communications for the affected Tennessee licensed ambulances when operating outside their primary base of operations.
 - (i) Communications equipment or techniques proposed as an alternative for VHF radio requirements identified by this rule shall be determined by the Division of Emergency Medical Services on a case by case basis. The Division may review alternative methods by requiring a demonstration of such equipment and procedures at any time to determine whether the alternative process is adequate.

RULEMAKING HEARINGS

- (ii) Communications equipment or techniques proposed as an alternative for such VHF radio requirements for EMS systems interoperability must be accompanied by all of the following:
 - (I) A realistic assessment of the range, coverage, and efficiency of those procedures and devices which are proposed;
 - (II) The availability of alternatives and the time necessary to deploy such alternatives; and
 - (III) The cost analysis for deployment of resources outside of the jurisdiction of the primary ambulance service provider for a seventy-two hour period, and statement that such deployment would not affect the capabilities within the primary jurisdiction to provide public safety interoperability.
- (b) Each emergency ambulance operated by an emergency medical service entity licensed to transact business in the State of Tennessee shall have mobile two-way radio capability on the frequency 155.295 MHz utilizing Digital coded squelch of 155, with approved equipment for on-scene interoperability and communications among health agencies and emergency medical services providers. Radio modifications for this frequency shall be required not later than six months following the effective date of this rule. All future paging activity on 155.295 MHz within the State of Tennessee shall be prohibited.
- (c) Each emergency ambulance operated by an emergency medical service entity licensed to transact business in the State of Tennessee shall have two-way radio capability on the frequency 155.340 MHz with approved equipment. The entity shall have a valid radio station license issued by the FCC (MOBILE ONLY) for all transmitting equipment on this frequency. The entity shall have a written agreement with an adjacent, or nearby, hospital operating a properly licensed base station on this frequency, such agreement extending cooperative communications to radio equipped vehicles of the entity. The ambulance crew shall use this frequency (155.340 MHz) as the primary patient information frequency in the absence of Ultra High Frequency (UHF) or 800 MHz capability between the ambulance and the medical facility.
- (d) Each licensed hospital within the State of Tennessee which maintains an emergency room and offers the facilities of this department to the general public shall have a two-way radio base station access capability on the EMS radio frequency(s) of 155.340 MHz and such other frequencies within the predominant service area of the hospital or identified in the approved Regional Frequency Use Plan. The primary service area is defined as a radius of not more than thirty (30) miles from the transmitting antenna site. The accessing control point for the base station shall be located in, or adjacent to, the emergency department of the hospital. When participating in an ultra high frequency system (MED channels), the hospital must retain a radio for responding to calls on 155.340 MHz. This frequency (155.340 MHz) is intended and dedicated as a two-way voice channel between the emergency medical technician, ambulance, and the hospital emergency department physician or authorized nurse. All paging activity on 155.340 MHz shall be prohibited.
- (e) Licensed hospitals within the State of Tennessee may, at their option, license the use of frequency 155.280 MHz. This frequency may be used by the hospital to converse with adjacent hospitals during routine or emergency situations, and may be further licensed for mobile operation and other medical purposes, as approved within the Regional EMS Communications Plan and the EMS Communications Manager.

RULEMAKING HEARINGS

- (f) Audible tones will be restricted to actual emergency radio transmissions alerting EMS or rescue personnel or in accordance with the approved Regional Frequency Use and State EMS Telecommunications Plans. Use of audible tones of more than two seconds preceding, during or following routine EMS radio transmission on these frequencies is prohibited.
- (g) The Tennessee Emergency Medical Services State EMS Communications Plan will guide technical specifications and approval of equipment. The plan will be revised, as appropriate, to reflect improvement in technology and systems design. Responsibility for development, implementation, and revision of the plan is delegated to the Director, Division of Emergency Medical Services.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-140-201, 68-140-203, 68-140-204, 68-140-205, 68-140-206, 68-140-207, 68-140-208, 68-140-502, 68-140-504, 68-140-505, and 68-140-513.

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of April, 2006. (04-21)

RULEMAKING HEARINGS

TENNESSEE DEPARTMENT OF HEALTH - 1200 DIVISION OF EMERGENCY MEDICAL SERVICES

There will be a hearing before the Division of Emergency Medical Services to consider the promulgation of amendments of rules pursuant to T.C.A., §§ 68-140-502, 68-140-503, 68-140-504, 68-140-514, and 68-140-522. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in conference room 133 of the Cordell Hull Building, First Floor, located at 425 Fifth Avenue North, Nashville, Tennessee at 10:00 a.m., Central Daylight Time, on the 16th day of June, 2006.

Any individuals with disabilities who wish to participate in these proceedings or review these filings should contact the Department of Health, Division of Emergency Medical Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date or the date the party plans to review such filings, to allow time for the Division of Emergency Medical Services to determine how it may reasonably provide such aid or service. Initial contact may be made with Richard F. Land, Director of Ambulance Service Licensure and Regulation, Division of Emergency Medical Services, Cordell Hull Building, First Floor, 425 Fifth Avenue, North, Nashville, TN 37247-0701, 615-741-2584.

For a copy of the entire text of the notice of rulemaking, contact Richard F. Land, Director of Ambulance Service Licensure and Regulation, Division of Emergency Medical Services, Cordell Hull Building, First Floor, 425 Fifth Avenue, North, Nashville, TN 37247-0701, 615-741-2584.

SUBSTANCE OF PROPOSED RULES

NEW RULE

1200-12-6

EMERGENCY MEDICAL SERVICES BOARD OFFICERS AND PROCEDURES

TABLE OF CONTENTS

1200-12-6-.01 Responsibilities of the Board Chairperson
1200-12-6-.02 Procedures for Contested Cases before the EMS Board
1200-12-6-.03 Petitions for Reconsideration and Stays

1200-12-6-.01 RESPONSIBILITIES OF THE BOARD CHAIRPERSON

- (1) The Board shall annually elect from its members a Board Chairperson, or at the next board meeting as a vacancy occurs or as a term expires, who shall preside at all Board meetings.
- (2) The Chairperson is authorized to call and schedule such meetings as necessary to conduct the business of the Board and to certify the actions of the Board.
- (3) In the absence of the duly elected chairperson, the Board may elect a Chairperson pro tem, who may preside over that meeting and certify the actions or orders from that meeting.

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1200-12-6-.02 PROCEDURES FOR CONTESTED CASES BEFORE THE EMS BOARD

- (1) All contested cases before the Board shall be conducted pursuant to the Rules of Procedure for Contested Cases of the Rules of the Secretary of State as compiled at Chapter 1360-4-1.

1200-12-6-.03 PETITIONS FOR RECONSIDERATION AND STAYS

- (1) The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-140-503, 68-140-504, 68-140-514, and 68-140-522.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 20th day of April, 2006 (04-22)

RULEMAKING HEARINGS

THE DEPARTMENT OF HEALTH - 1200 TENNESSEE MEDICAL LABORATORY BOARD DIVISION OF HEALTH RELATED BOARDS

There will be a hearing before the Tennessee Medical Laboratory Board to consider the promulgation of amendments to rules and a new rule pursuant to T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-105, 68-29-113, 68-29-118, 68-29-119, and 68-29-126. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Tennessee Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 3:30 p.m. (CDT) on the 16th day of June, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1200-6-1-.06 Fees, is amended by deleting subparagraphs (1) (b) and (3) (b) in their entirety and renumbering the remaining subparagraphs accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, and 68-29-105.

Rule 1200-6-1-.12 Continuing Education, is amended by inserting the following language as new part (1) (a) 30. and renumbering the remaining parts accordingly, and is further amended by adding the following language as subparagraph (1) (d), and is further amended by deleting subparagraph (3) (b) in its entirety and substituting instead the following language, so that as amended, the new part (1) (a) 30. and the new subparagraphs (1) (d) and (3) (b) shall read:

- (1) (d) Continuing education credit will be assigned on the following basis:
 - 1. Any single session lasting not less than two and one-half (2½) clock hours will be assigned three (3) hours of continuing education credit.
 - 2. Any single session lasting not less than one (1) clock hour and forty (40) clock minutes will be assigned two (2) hours of continuing education credit.
 - 3. Any single session lasting not less than fifty (50) clock minutes will be assigned one (1) hour of continuing education credit.

RULEMAKING HEARINGS

4. The hours assigned shall be based on actual instruction or program time, excluding registration time and breaks, but including question and answer time.
- (1) (a) 30. Southern Association of Clinical Microbiologists.
- (3) (b) The individual must, within thirty (30) days of a request from the board, provide evidence of continuing education activities. Such evidence must be by submission of one (1) or more of the following:
 1. Photocopies of certificates verifying the licensee's attendance at continuing education program(s). The certificate photocopies must include the following: continuing education program's provider, date, clock hours awarded (continuing education units must be converted to clock hours), program title, and licensee's name.
 2. Photocopies of original letters on official stationery from the continuing education program's provider indicating, date, clock hours awarded (continuing education units must be converted to clock hours), program title, and licensee's name.
 3. Photocopies of certificates or letters verifying successful completion of a written post experience examination to evaluate material retention upon completion of a multi-media and/or electronic course, as provided in paragraph (4). The certificate or letter photocopies must include the clock hours awarded (continuing education units must be converted to clock hours), program title, and licensee's name.
 4. Preparing and teaching continuing education courses [subparagraph (1) (b)] – A letter from the education director, laboratory director, department head, dean of the institution, or officer of the approved organization attesting that the course was presented and including time spent in classroom, date and location of course presentation, course title, and licensee's name; and
 - (i) Copy of written course materials or course outline; or
 - (ii) Copy of summary of on-site commentary at multi-media courses.
 5. Published articles [subparagraph (1) (c)] – Copies of published articles.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, and 68-29-119.

Rule 1200-6-1-.22 Qualifications, Responsibilities and Duties of Testing Personnel, is amended by deleting subparagraphs (1) (a) and (1) (b) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (a) and (1) (b) shall read:

- (1) (a) To become licensed as a medical laboratory technologist an applicant must:
 1. Submit satisfactory evidence of successfully completing and passing a national certifying examination and being nationally certified at the technologist level by either the ASCP, NCA, NRCC, NRM, ABB, AMT or any other national certifying agency recognized by the Board (Successful completion of the Health and Human Services proficiency examination in clinical laboratory science does not meet this criteria for licensure); and

RULEMAKING HEARINGS

2. In addition to possessing the national certification required by part 1. of this subparagraph, submit satisfactory evidence of having met one (1) of the following educational criteria:
 - (i) A baccalaureate degree in medical technology or in one of the biological, chemical or physical sciences, and completion of a medical laboratory technologist training program that was, at the time of graduation, either
 - (I) approved or under the auspice of the National Accrediting Agency for Clinical Laboratory Sciences (NAACLS); or
 - (II) approved by a national accrediting agency acceptable to the Board; or
 - (III) completed in a specialty program conducted by a hospital or other institution approved pursuant to Rule 1200-6-2-.04; or
 - (ii) A baccalaureate degree from an accredited college/university, completion of an accredited MLT/CLT training program and three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (h); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (g); or
 - (iii) A baccalaureate degree from an accredited college/university, completion of an official military laboratory procedures course of at least fifty (50) weeks duration in residence and have held the military enlisted occupational specialty of Medical Laboratory Specialist, and three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (h); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (g); or
 - (iv) A baccalaureate degree from an accredited college/university and five (5) years of full time clinical laboratory work experience as defined in subparagraph (1) (h); the individual must have completed science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (g); or
 - (v) For those individuals who were certified or eligible for national certification by examination at the technologists level prior to September 1, 1997 (the date on which CLIA required a baccalaureate degree for certification at the technologist level) the applicant, in addition to complying with part 1. of this subparagraph must submit satisfactory evidence of one (1) of the following:
 - (I) Having received a passing grade on a Health and Human Services proficiency examination in clinical laboratory science and having completed of five (5) years of full time clinical laboratory work experience as defined in subparagraph (1) (h); or
 - (II) Having completed both of the following:
 - I. A minimum of ninety (90) semester hours of science coursework equivalent to that required in a laboratory science education program as defined by subparagraph (1) (g) of this rule; and

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- II. A medical laboratory technologist training program that was approved at the time of graduation by the National Accrediting Agency for Clinical Laboratory Sciences (NAACLS) or a national accrediting agency acceptable to the Board.

(1) (b) To become licensed as a medical laboratory technician an applicant must:

1. Submit satisfactory evidence of successfully completing and passing a national certifying examination and being nationally certified at the technician level; and
2. In addition to possessing the national certification required by part 1. of this subparagraph, submit satisfactory evidence of one (1) of the following educational criteria:
 - (i) Having received an associate degree from an accredited college/university and having completed an accredited medical laboratory technician training program that was approved at the time of graduation by the National Accrediting Agency for Clinical Laboratory Sciences (NAACLS) or a national accrediting agency acceptable to the Board; or
 - (ii) Having received an associate degree from an accredited college/university and having completed an official military laboratory procedures course of at least fifty (50) weeks duration in residence and having held the military enlisted occupational specialty of Medical Laboratory Specialist; or
 - (iii) Having received an associate degree from an accredited college/university which included at least six (6) semester hours of chemistry and six (6) semester hours of biology and three (3) years of full time clinical laboratory work experience as defined in subparagraph (1) (h).

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-103, 68-29-105, and 68-29-118.

Rule 1200-6-3-.02 Licensing Procedures, is amended by deleting paragraph (3) in its entirety and renumbering the remaining paragraph accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, and 68-29-113.

Rule 1200-6-3-.19 Preparatory Portions of Laboratory Tests, is amended by adding the following language as new subparagraph (2) (g):

- (2) (g) Any activities required prior to microscopic evaluation of cytology specimens.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, and 68-29-129.

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NEW RULE

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1200-6-3-.21 Renewal of Laboratory License

1200-6-3-.21 RENEWAL OF LABORATORY LICENSE.

- (1) The license to operate a laboratory or collection station shall expire annually on the anniversary of the date that the license was originally issued. To continue operations, laboratories and collection stations must renew their licenses on or before the expiration date.
- (2) Methods of Renewal
 - (a) 1. Internet Renewals - Laboratories and collection stations may apply for renewal and pay the necessary fees via the Internet. The application to renew can be accessed at:

www.tennessee.gov/health
 2. Paper Renewals - For laboratories or collection stations that have not renewed their license online via the Internet, a renewal application form will be mailed to each laboratory and collection station licensed by the Board at least sixty (60) days prior to the expiration date to the last address provided to the Board. Failure to receive such notification does not relieve the laboratory or collection station from the responsibility of meeting all requirements for renewal.
- (3) To be eligible for renewal, a laboratory or collection station must submit to the Division of Health Related Boards on or before the expiration date all of the following:
 - (a) 1. A completed renewal application form, signed by the owner and director of the medical laboratory or public official responsible for the operation of a city or county medical laboratory or institution that contains a medical laboratory; and
 2. In alphabetical order, a roster of all personnel currently employed in the laboratory, the classification/category in which the employee functions and is licensed, license number, expiration date and social security number. This shall include all medical laboratory directors, consultants, supervisors and testing personnel; and
 3. The renewal and state regulatory fees as provided in Rule 1200-6-3-.02
- (4) All laboratories performing tests must file a separate renewal application for each laboratory address.
- (5) Laboratories within a hospital that are located in contiguous buildings on the same campus and under common direction may file a single renewal application or multiple renewal applications for the laboratory sites within the same physical location or street address.
- (6) Laboratories and collection stations which submit a signed renewal form or letter that is found to be untrue may be subject to disciplinary action as provided in Rule 1200-6-1-.15.

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- (7) Laboratories and collection stations which fail to comply with the renewal rules or notification received by them concerning failure to timely renew shall have their licenses processed pursuant to rule 1200-10-1-.10.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 68-29-105, 68-29-113, and 68-29-126.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 17th day of April, 2006. (04-12)

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THE TENNESSEE DEPARTMENT OF HUMAN SERVICES - 1240 APPEALS AND HEARINGS DIVISION

There will be a hearing before the Tennessee Department of Human Services to consider the promulgation of amendments of rules, repeals of rules and new rules pursuant to Tennessee Code Annotated Sections 4-5-202; 71-1-105(12) and 71-1-111. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the 2nd Floor Board Room, Citizens Plaza Building, 400 Deaderick Street, Nashville, Tennessee 37248, at 1:30PM CST on the 19th day of June, 2006.

Any individuals with disabilities who wish to participate in these proceedings or to review these filings should contact the Department of Human Services to discuss any auxiliary aids or services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date or the date the party intends to review such filings, to allow time for the Department of Human Services to determine how it may reasonably provide such aid or service. Initial contact may be made with the Department of Human Services' ADA Coordinator, Anneita Dunbar, Citizens Plaza Building, 400 Deaderick Street, 3rd Floor, Nashville, Tennessee 37248, telephone number (615) 313-5563, (TTY)-(800)270-1349.

For a copy of this Notice of Rulemaking hearing, contact: Phyllis Simpson, Assistant General Counsel,, Department of Human Services, Citizens Bank Building, 400 Deaderick Street, 15th Floor, Nashville, Tennessee, 37248-0006, telephone number (615) 313-4731.

SUBSTANCE OF PROPOSED RULES OF THE TENNESSEE DEPARTMENT OF HUMAN SERVICES ADMINISTRATIVE PROCEDURES DIVISION

CHAPTER 1240-5-1 INTRODUCTION

AMENDMENTS

The Division designation for the Administrative Procedures Division of the Department of Human Services in Chapter 1240-5 is amended to change the name of the Division from the Administrative Procedures Division to the Appeals and Hearings Division.

Authority: *T.C.A. §§ 4-5-101, 4-5-202, 71-1-105(12) and 71-1-111.*

Rule 1240-5-1-.01, Grievances, is amended by deleting the rule in the entirety, and by renaming subchapter .01, "Appeals" and by amending the Table of Contents accordingly, so that, as amended, the rule shall read as follows:

1240-5-1-.01 APPEALS.

(1) General Rule.

- (a) When an appellant is dissatisfied with any adverse administrative action taken by the Department of Human Services, including failure to act upon a request or application within required time frames, which is within the discretion and control of the Department of Human Services, unless otherwise directed or limited by law or regulation, or unless

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waived, he/she has the right to timely appeal for a fair hearing conducted by an impartial Department official or by a hearing official with the Department of State, at the designation of the Commissioner of Human Services. (Proceedings involving Families First and Food Stamp Intentional Program Violations are set forth under Department of Human Services State Rules at Chapters 1240-5-14 and 1240-5-15.)

(b) Vocational Rehabilitation Services Appeals.

1. Appeals of decisions of the Division of Rehabilitation Services affecting Vocational Rehabilitation Services appellants and the designation of a hearing official are specifically governed by State Rule 1240-5-1-.05.
2. The conduct of appeals for the Vocational Rehabilitation Program under this Chapter and under the Administrative Procedures Act shall be subject to the procedural provisions contained in Rule 1240-5-1-.05 because of specific provisions of Federal law and regulations governing that program, and the provisions of this Chapter and the Administrative Procedures Act are applicable only to the extent that there is no conflict with the provisions of Chapter 1240-5-1-.05, and any conflicting provisions of this Chapter and the Administrative Procedures Act shall be resolved by reference to Chapter 1240-5-1-.05.

(c) Summer Food Service Program pursuant to 42 U.S.C. § 1761 and 7 C.F.R. § 225.13.

1. Appeals of decisions of the Department of Human Services affecting the Summer Food Service Program and the designated hearing official are specifically governed by the Federal enabling statute and rules found at 42 U.S.C. § 1761 and 7 C.F.R. § 225.13.
2. The conduct of appeals for the Summer Food Service Program under this Chapter and under the Administrative Procedures Act shall be subject to the specific provisions of Federal law and regulations governing that program, and the provisions of this Chapter and the Administrative Procedures Act are applicable only to the extent that there is no conflict with the provisions of 42 U.S.C. § 1761 and 7 C.F.R. § 225.13.

(d) Child and Adult Care Food Program pursuant to 42 U.S.C. § 1766 and 7 C.F.R. § 226.6.

1. Appeals of decisions of the Department of Human Services affecting the Child and Adult Care Food Program and the designated hearing official are specifically governed by the Federal enabling statute and rules found at 42 U.S.C. § 1766 and 7 C.F.R. § 226.6.
2. The conduct of appeals for the Child and Adult Care Food Program under this Chapter and under the Administrative Procedures Act shall be subject to the specific provisions of Federal law and regulations governing that program, and the provisions of this Chapter and the Administrative Procedures Act are applicable only to the extent that there is no conflict with the provisions of 42 U.S.C. § 1766 and 7 C.F.R. § 226.6.

(e) Child Care Agency Licensing Appeals.

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1. Child care agency appeals of adverse administrative actions by the Department pursuant to T.C.A. § 71-3-509 involving denials, revocations or restrictions of a child care agency's license and civil penalties or safety plans involving child care agencies are heard only by the Child Care Agency Board of Review pursuant to T.C.A. §§ 71-3-509—510 and Chapters 1240-4-5 and 1240-5-13.
- (2) When any party to an adverse administrative action for child support or related administrative enforcement of child support is dissatisfied with any action taken by the Department of Human Services which is within the discretion and control of the Department of Human Services, that is listed in T.C.A. §§ 36-5-1001 and 36-5-1002, or which is otherwise required to have due process procedures for administrative actions affecting the party, he/she has the right to timely appeal for a fair hearing by an impartial Department official.
- (3) Administrative actions taken by the Department of Human Services pursuant to judicial order or which are the subject of pending judicial proceedings shall not be subject to review by a fair hearing.

Authority: T.C.A. §§ 4-5-101, 4-5-202, 4-5-301, 36-5-1001, 36-5-1002, 71-1-105(12) and 71-1-111.

Rule 1240-5-1-.03, Legal Base, is amended by deleting paragraphs (1), (3) and (4) in their entireties, and by substituting instead the following new language, so that, as amended, paragraphs (1), (3) and (4) shall read as follows:

- (1) Basis for hearings.
 - (a) Fair hearings providing due process for the resolution of appeals of decisions of the Tennessee Department of Human Services affecting persons receiving services or assistance or child support services from the Department are required by Federal and/or State law, regulations and *Goldberg v. Kelly*, 397 U.S. 254, 90 S.Ct. 2011 (1970) for:
 1. The Food Stamp program at 7 U.S.C. §§ 2020 and 2025 and at 7 C.F.R. § 273.15;
 2. Temporary Assistance to Needy Families (TANF/Families First) pursuant to Title IV-A of the Social Security Act [42 U.S.C. §§ 601 et seq.] and 45 C.F.R. § 205.10;
 3. Medicaid/TennCare services under Titles XVI and XIX of the Social Security Act, pursuant to 42 U.S.C. § 1396 and 42 C.F.R. §§ 431.200 et seq.;
 4. Social Services in Title XX of the Social Security Act, pursuant to 42 U.S.C. § 1397 and 42 U.S.C. § 9901 and Federal regulations applicable to individual programs;
 5. Services for the blind pursuant to the Randolph-Sheppard Act pursuant to 20 U.S.C. § 107b(6) and 34 C.F.R. §§ 395 et seq.;
 6. Vocational rehabilitation services pursuant to the Rehabilitation Act of 1973, as amended, 29 U.S.C. §§ 701 et seq., 720 et seq., and 722 et seq. and 34 C.F.R. §§ 361 et seq.;
 7. Child support services pursuant to Title IV-D of the Social Security Act at 42 U.S.C. § 651 et seq. and in Tennessee Code Annotated Title 36, Chapter 5, Part 10;

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8. Summer Food Service Program pursuant to 42 U.S.C. § 1761 and 7 C.F.R. § 225.13;
9. Child and Adult Care Food Program pursuant to 42 U.S.C. § 1766 and 7 C.F.R. § 226.6;
10. Low Income Home Energy Assistance Program and Weatherization Assistance Program pursuant to 42 U.S.C. § 8624 and 42 U.S.C. § 6851 and Tennessee Department of Human Services Rules 1240-7-1 and 1240-7-2;
11. Child care agency report card assessments pursuant to Chapter 1240-4-7;
12. Child care agency license probations and suspensions pursuant to T.C.A. § 71-3-509;
13. Criminal history exclusions for persons having access to children in child care agencies or having access to adults in adult day care centers pursuant to T.C.A. §§ 71-2-403(a) and 71-3-509(e) and (f);
14. Adult day care licensing actions pursuant to T.C.A. § 71-2-401 et seq.; and
15. Any other programs to which due process requirements may apply.

(b) Authority for Contested Case Hearings.

1. The Commissioner of Human Services has authority to conduct or cause to be conducted hearings for fact determinations that the Department is authorized or required to make. The commissioner, and any officer or employee of the Department upon written authorization from the commissioner, has the power to administer oaths and affirmations, take depositions, issue subpoenas, and require the production of any books and records that may be necessary. Hearings involving the programs providing services and assistance from the Department of Human Services shall be conducted pursuant to the contested case provisions of the Administrative Procedures Act, Tennessee Code Annotated, Sections 4-5-301 et seq., except as otherwise required by law or regulation.
 2. The Department of Finance and Administration has placed responsibility for conducting contested case proceedings for Title XIX cases involving the determination of eligibility for the TennCare/Medicaid program in the Commissioner of the Department of Human Services.
 3. The Commissioner of Human Services is specifically authorized to designate a hearing official in the Department of Human Services pursuant to T.C.A. § 71-1-111 or a hearing official of the Department of State Administrative Procedures Division, to conduct contested case proceedings .
- (3) The Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. §§ 4-5-101 et seq., and T.C.A. §§ 4-5-201 et seq. provides for the use of uniform procedures for agency rulemaking.
- (4) The Tennessee Uniform Administrative Procedures Act, as amended, T.C.A. §§ 4-5-301 et seq., requires the use of uniform procedures for the conduct of hearings on appeals held by all state agencies of Tennessee.

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Authority: T.C.A. §§ 4-5-101, 4-5-201 et seq., 4-5-301, 36-5-701 et seq., 36-5-1001—1003, 71-1-105(12), 71-1-111 and 71-3-151 et seq.; 7 U.S.C. §§ 2014, 2015, 2020(e)(10) and 2025; 20 U.S.C. § 107b; 29 U.S.C. §§ 701 et seq., 720 et seq. and 722 et seq.; 42 U.S.C. §§ 601 et seq.; 42 U.S.C. §§ 651 et seq.; 42 U.S.C. § 1396; 42 U.S.C. § 1397; 42 U.S.C. §§ 1761 and 1766; 42 U.S.C. § 6851; 42 U.S.C. § 8624(b)(13); 42 U.S.C. § 9901; 34 C.F.R. §§ 361 et seq.; and 34 C.F.R. §§ 395 et seq. and 10 C.F.R. § 440.1.

Rule 1240-5-1-.04, Scope, is amended by deleting paragraph (1) in its entirety, and by substituting instead the following new language so that, as amended, paragraph (1) shall read as follows:

- (1) Subject to any superseding Federal or State law, and specifically subject to the superseding provisions of 1240-5-1-.01(1)(b), (d) and (e), these rules shall govern contested case proceedings before the Department of Human Services and will be relied upon by hearing officials in all contested cases utilizing hearing officials.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 71-1-105(12) and 71-1-111; 29 U.S.C. §§ 701 et seq., 720 et seq. and 722 et seq.; 42 U.S.C. §§ 1761 and 1766; 34 C.F.R. §§ 361 et seq.; and 7 C.F.R. §§ 225.13 and 226.6.

CHAPTER 1240-5-2 DEFINITIONS

AMENDMENTS

Rule 1240-5-2-.01, Definitions, is amended by deleting the rule in the entirety, and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-5-2-.01 DEFINITIONS.

- (1) The following words and terms as used in the rules for the Appeals and Hearings Division shall have the meaning described below:
 - (a) **Administrative Law Judge.** An Administrative Law Judge is an impartial hearing official of the Department of Human Services' Appeals and Hearings Division or the Administrative Procedures Division of the Office of the Secretary of State who is licensed to practice law and is designated by the Commissioner to conduct contested case proceedings pursuant to T.C.A. § 4-5-301 et seq., except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05(9). The Administrative Law Judge shall have no direct involvement in the action under consideration prior to filing of the appeal.
 - (b) **Administrative Procedures Division, Secretary of State's Office.** The Administrative Procedures Division of the Office of the Secretary of State, 312 Eighth Avenue North, 8th Floor, William R. Snodgrass Tower, Nashville, Tennessee 37243; Telephone (615) 741-7008 which provides Administrative Law Judges to adjudicate contested case hearings involving State agencies.
 - (c) **Adverse Administrative Action.** Determinations, procedures or omissions of the Department of Human Services affecting an appellant or person who is a party in a child support case being enforced by the Department of Human Services concerning:
 1. The denial of an application for assistance or services;
 2. Cost sharing disputes for assistance or services;

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3. The limitation, reduction, suspension or termination of eligibility for assistance or services;
 4. Failure to act upon a request or application within required time frames; disputes regarding disenrollment from TennCare Standard or TennCare Medicaid; or
 5. The provision of child support services.
- (d) Agency. The Tennessee Department of Human Services.
- (e) Appeal. The process by which an appellant requests review of an adverse administrative action in accordance with procedures established in these rules.
- (f) Appeals and Hearings Division, Department of Human Services. The Appeals and Hearings Division, Department of Human Services, P. O. Box 198996, 400 Deaderick Street, 9th Floor Citizen's Plaza Building, Nashville Tennessee 37219-8996; Telephone (615) 313-5800 and 1-866-768-1046 toll free number is responsible for processing appeals involving the assistance or service programs of the Department, or any other programs that have been assigned or delegated to the Department by law, regulation, or contract.
- (g) Appellant. An appellant is an individual who is dissatisfied with an adverse administrative action of the Department in regard to the furnishing or denial of assistance or services or eligibility actions by the TennCare Bureau or the provision of child support services, and who, as a result, is requesting a fair hearing before the Appeals and Hearings Division.
- (h) Applicant for Assistance. An applicant for assistance shall be the person who submits an application for assistance from an Assistance Program of the Department of Human Services or the TennCare Bureau or the person in whose behalf an application is submitted if the person submitting the application is applying for assistance for someone else.
- (i) Applicant for Services. An applicant for services shall be the person on whose behalf a service is sought from a Service Program or the Child Support Program of the Department of Human Services, even though some other person may request the service and/or may incidentally benefit from the service.
- (j) Assistance Programs. The assistance programs currently encompass Families First, Food Stamp, Mandatory Minimum State Supplement, Medicaid or TennCare under Title XIX of the Social Security Act (42 U.S.C. §§ 1396, et seq.) and any programs in the Adult and Community Services Division that determine eligibility for direct cash or third party vendor payments to applicants or recipients. Additional programs may be added at a later time or programs may be terminated due to legal, policy or financial considerations.
- (k) Burden of Proof.
1. The "burden of proof" refers to the duty of a party to present evidence on and to show, by a preponderance of the evidence, that an allegation is true or that an issue should be resolved in favor of that party.
 2. A "preponderance of the evidence" means the greater weight of the evidence or that, according to the evidence, the conclusion sought by the party with the burden of proof is the more probable conclusion.

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3. The burden of proof is generally assigned to the party who seeks to change the present state of affairs with regard to any issue.
 4. Generally, the party with the burden of proof presents his or her proof first at the hearing.
 5. The hearing official makes all decisions regarding which party has the burden of proof on any issue, and determines the order of proceedings, taking into account the interests of fairness, simplicity, and the speedy determination of the matter at hand.
- (l) Bureau of TennCare (Bureau). The administrative unit of TennCare which is responsible for the administration of TennCare and Medicaid, the programs administered by the Single State agency as designated by the State and CMS (Centers for Medicare and Medicaid Services) pursuant to Title XIX of the Social Security Act and the Section 1115 Research and Demonstration waiver granted to the State of Tennessee.
- (m) Commissioner. The Commissioner of the Tennessee Department of Human Services.
- (n) Commissioner's Designee.
1. A person authorized by the Commissioner to review appeals of initial orders and to enter final orders pursuant to T.C.A. § 4-5-315, or to review petitions for a stay or reconsideration of final orders. A Commissioner's designee may also be a hearing officer who is an impartial official of the Department of Human Services or the Department of State Administrative Procedures Division who is designated by the Commissioner to conduct contested case administrative hearing proceedings.
 2. The person so designated shall have no direct involvement in the adverse administrative action under consideration prior to the filing of the appeal.
- (o) Contested Case. Contested case means an administrative hearing proceeding, including a declaratory proceeding conducted pursuant to T.C.A. § 4-5-223, in which the legal rights, duties or privileges of a party are required by any statute or constitutional provision to be determined by the Department after an opportunity for hearing. The Department may commence a contested case at any time with respect to a matter within its jurisdiction.
- (p) Department. The Tennessee Department of Human Services.
- (q) Enrollee. Enrollee shall mean an individual eligible for and enrolled in the TennCare Standard Program or in any Tennessee federal Medicaid waiver program approved by the Secretary of the U.S. Department of Health and Human Services pursuant to Sections 1115 or 1915 of the Social Security Act.
- (r) Fair Hearing.
1. A fair hearing is a contested case proceeding before an impartial hearing official designated by the Commissioner of the Department of Human Services (except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05(9) or other State or Federal law or regulation) in which an appellant or his/her representative may present his/her case, with or without

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witnesses, to determine whether action or inaction by the county, area, regional, district, child support office or state office is erroneous and should be corrected.

2. A fair hearing may combine appeals of an appellant involving any programs for which the Department and the Appeals and Hearings Division may have responsibility. If necessary for the proper resolution of an appeal involving multiple programs, separate fair hearings for an appellant involving multiple program actions for a single appellant or household may be held in the discretion of the Commissioner, the Assistant Commissioner for Appeals and Hearings or their designees, or, on motion of the parties or in his/her discretion, the hearing official.
- (s) Filing. Unless otherwise provided by law or by these rules, "filing" means actual receipt by the entity designated to receive the required materials.
- (t) Final Order.
1. The final decision of the Appeals and Hearings Division, or the Administrative Procedures Division where applicable, concerning contested case administrative hearing proceedings.
 2. An Initial Order becomes a Final Order without further notice if a timely Petition for Appeal pursuant to T.C.A. § 4-5-315, Petition for Reconsideration pursuant to T.C.A. § 4-5-317, or Petition for a Stay of Effectiveness pursuant to T.C.A. § 4-5-316 is not filed with the Appeals and Hearings Division or the Administrative Procedures Division, where applicable.
 3. If the Petition for Reconsideration of the Initial Order is either denied by order of the hearing official or deemed denied by law and a petition of appeal of the Initial Order is not timely filed, the Initial Order shall become a Final Order fifteen (15) days after the entry date of the order denying the petition for reconsideration or the date the Petition for Reconsideration was deemed denied.
 4. A statement of the procedures and time limits for seeking reconsideration or judicial review shall be included in the Final Order.
- (u) Findings of Fact. The factual findings following the administrative hearing, enumerated in the Initial and/or Final Order, which include a concise and explicit statement of the underlying facts of record to support the findings.
- (v) Hearing Officer. A Hearing Officer is an impartial official of the Department of Human Services or the Department of State who, may be, but is not required to be licensed to practice law, and is designated by the Commissioner or his/her designated representative to conduct contested case proceedings pursuant to T.C.A. § 4-5-301 et seq., except where otherwise provided in Vocational Rehabilitation Services appeals under State Rule 1240-5-1-.05(9). The staff member designated as Hearing Officer shall have no direct involvement in the action under consideration prior to filing of the appeal.
- (w) Hearing Official. An Administrative Law Judge or Hearing Officer.
- (x) Initial Order.
1. The decision of the hearing official following a contested case administrative hearing proceeding.

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2. The Initial Order shall contain the decision, findings of fact, conclusions of law, the policy reasons for the decision and the remedy prescribed.
 3. It shall include a statement of any circumstances under which the Initial Order may, without further notice, become a Final Order.
 4. An Initial Order becomes a Final Order without further notice if a timely Petition for Appeal pursuant to T.C.A. § 4-5-315, Petition for Reconsideration pursuant to T.C.A. § 4-5-317 is not filed within 15 days after the entry of the Initial Order, with the Appeals and Hearings Division or the Administrative Procedures Division, where applicable or Petition for a Stay of Effectiveness pursuant to T.C.A. § 4-5-316 is not filed.
 5. If the Petition for Reconsideration of the Initial Order is either denied by order of the hearing official or deemed denied by law and a petition of appeal of the Initial Order is not timely filed, the Initial Order shall become a Final Order fifteen (15) days after the entry date of the order denying the petition for reconsideration or the date the Petition for Reconsideration was deemed denied.
 6. A statement of the procedures and time limits for seeking reconsideration or other administrative relief and the time limits for seeking judicial review shall be included with the Initial Order.
 7. If an Initial Order is timely appealed, the Commissioner's designated representative shall process the appeal pursuant to Chapter 1240-5-9 of these rules.
- (y) License. A license includes the whole or part of any permit, certificate, approval, registration, charter or similar form of permission required by law to engage in a business trade or profession.
- (z) Licensing. Licensing includes the processes of the Department respecting the grant, denial, renewal, revocation, suspension, withdrawal or amendment of a license.
- (aa) Local Office.
1. A local office is the Departmental office from which the case that is being heard by the Appeals and Hearings Division originated based upon its determination of eligibility for assistance or services. It refers primarily to the county office, except Services for the Blind or Vocational Rehabilitation Services, which would be the area office.
 2. In the case of Title IV-D child support appeals, the local office refers to the local Title IV-D child support office in each judicial district operated by the Department or its contractors.
- (bb) Notice of Hearing. The document containing a statement of the time, place, nature of the hearing, and the right to be represented by counsel; a statement of the legal authority and jurisdiction under which the hearing is to be held, referring to the particular statutes and rules involved; and, a short and plain statement of the matters asserted, in compliance with T.C.A. § 4-5-307 (b).

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- (cc) Party. A party means each person, entity or agency named or admitted as a participant, or properly seeking and entitled as of right to be admitted as a participant, in a contested case administrative hearing..
- (dd) Person. A person means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character, including another agency.
- (ee) Petition for Appeal. A pleading filed pursuant to T.C.A. § 4-5-315 with the Appeals and Hearings Division, or the Administrative Procedures Division where applicable, after entry of the Initial Order stating the specific grounds upon which relief from the Initial Order is requested. If an Initial Order is subject to both a timely filed Petition for Appeal and Petition for Reconsideration, as provided in T.C.A. § 4-5-315(b), the Petition for Reconsideration is disposed of first and a new time period to file a Petition for Appeal commences as provided in State Rule 1240-5-9-.01(5).
- (ff) Petition for Judicial Review. A pleading filed with the Chancery Court appealing the contested case administrative hearing decision as provided in T.C.A. § 4-5-322 and State Rule 1240-5-10-.02.
- (gg) Petition for Reconsideration. A pleading filed pursuant to T.C.A. § 4-5-317 with the Appeals and Hearings Division, or the Administrative Procedures Division where applicable, after entry of the Initial Order or Final Order stating the specific grounds upon which relief from the Initial Order or Final Order is requested from the hearing official who entered the Order.
- (hh) Petition for Stay of Effectiveness of Initial or Final Order. A document seeking to have the agency suspend the effectiveness of an Initial or Final Order pending further appeal. A party may submit under T.C.A. § 4-5-316 to the Appeals and Hearings Division, or to the Administrative Procedures Division if a hearing official in the Department of State conducted the contested case proceeding, a Petition for Stay of Effectiveness of an Initial Order or Final Order within seven (7) days after its entry, unless otherwise provided by statute or stated in the Initial or Final Order. The Appeals and Hearings Division, or the Administrative Procedures Division as applicable, may take action on the Petition for Stay, either before or after the effective date of the Initial or Final Order.
- (ii) Petitioner. The petitioner in a contested case proceeding is the party who has initiated the proceedings.
- (jj) Pleadings. Pleadings are written statements of the facts and law which constitute a party's position or point of view in a contested case and which, when taken together with the other party's pleadings, will define the issues to be decided in the case. Pleadings may be in legal form – as, for example, a “Notice of Hearing and Charges”, “Petition for Hearing” or “Answer”. Where not practicable to put them in legal form, letters or other papers may serve as pleadings in a contested case, if necessary to define what the parties' positions are and what the issues in the case will be.
- (kk) Recipient of Assistance. The recipient of assistance shall be the person or household actually receiving assistance from an Assistance Program of the Department of Human Services.
- (ll) Recipient of Services. The recipient of services is the person for whose benefit services are provided by a service program of the Department of Human Services. The recipient

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of services for children shall be the child for whose benefit the service is being provided. The recipient of adult protective services shall be the elderly or disabled adult for whose benefit the service is provided. The recipient of rehabilitation services or services to the blind shall be the disabled individual to whom such services are directed.

- (mm) Respondent. The Respondent in a contested case proceeding is the party who is responding to the action brought by the “petitioner”.
- (nn) Rule. A rule means each agency statement of general applicability that implements or prescribes law or policy or describes the procedures or practice requirements for any agency. The term includes the amendment or repeal of a prior rule, but does not include:
 - 1. Statements concerning only the internal management of an agency and not affecting private rights, privileges or procedures available to the public; or
 - 2. Declaratory rulings issued pursuant to T.C.A. § 4-5-223; or
 - 3. Intra-agency memoranda; or
 - 4. General policy statements which are substantially repetitious of existing law.
- (oo) Services Programs. The service programs are those in the Division of Adult and Community Services, the Rehabilitation Services Divisions and Services for the Blind or Child Support Division that provide social, protective services, rehabilitation services or child support services to individuals.
- (pp) TennCare Standard. TennCare Standard is that part of the TennCare Program which provides health coverage for certain Tennessee residents who meet certain eligibility requirements but who are not eligible for Medicaid under Tennessee’s Title XIX State Plan for Medical Assistance and is further defined in the Rules and Regulations of Tennessee Department of Finance and Administration Bureau of TennCare at Chapter 1200-13-14.
- (qq) Tennessee Rules of Civil Procedure (TRCP). The rules governing civil actions in courts of record in Tennessee or where applicable as otherwise required by statute.
- (rr) Uniform Administrative Procedures Act (UAPA or APA). The Tennessee Uniform Administrative Procedures Act, as amended, codified at T.C.A. §§ 4-5-301, et seq.
- (ss) Valid Factual Dispute. A dispute that, if resolved in favor of the appellant, would prevent the state from taking the action that is the subject of the appeal.

Authority: T.C.A. §§ 4-5-101, 4-5-201 et seq., 4-5-301 et seq., 36-5-1001 and 1002, 71-1-105(12), 71-1-111, 71-1-132 and 71-3-151 et seq.; 7 U.S.C. §§ 2014 and 2015; 20 U.S.C. § 107b; 29 U.S.C. §§ 701 et seq., 720 et seq. and 722 et seq.; 42 U.S.C. §§ 601 et seq.; 42 U.S.C. §§ 651 et seq.; 42 U.S.C. § 1396; 42 C.F.R. §§ 431.210(d)(2) and 431.220(b); 34 C.F.R. §§ 395 et seq. and 34 C.F.R. §§ 361 et seq.; 7 C.F.R. § 273.15(k)(1); and 45 C.F.R. § 205.10(a)(4)(iii) and (5).

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CHAPTER 1240-5-3 FAIR HEARING REQUESTS

AMENDMENTS

Rule 1240-5-3-.01, Right To Appeal, is amended by deleting the rule in the entirety and by substituting instead the following new language, so that, as amended, the rule shall read as follows:

1240-5-3-.01 RIGHT TO APPEAL.

- (1) Commencement of Action. A contested case proceeding may be commenced by original agency action, by appeal from an agency action, by request for hearing by an affected person, or by any other lawful procedure.
- (2) An appellant or his/her authorized representative on his/her behalf, has a right to appeal any adverse administrative action taken by the Department in regard to the assistance or services for which he/she has applied, is receiving, or which has/have been terminated or any other adverse administrative action otherwise affecting a person's status under a program administered by the Department of Human Services. Grievances shall be addressed to the Department's interpretations of the law and the validity and applicability of the policies promulgated under the law as they apply to the appellant's individual factual situation; provided that actions taken pursuant to judicial order or which are the subject of pending judicial proceedings shall not be subject to review by a fair hearing.
- (3) When any party to an administrative action for child support or related administrative enforcement is dissatisfied with any action taken by the Department of Human Services which is within the discretion and control of the Department of Human Services, and that is listed in T.C.A. §§ 36-5-1001 and 36-5-1002 or which may otherwise be required by law, he/she has the right to timely appeal for a fair hearing by an impartial Department official.
- (4) Methods of Filing an Appeal.
 1. Except as provided in part 2 below, the appellant or his/her representative may request a hearing by any clear expression, oral or written.
 2. Exceptions requiring appeals to be submitted in writing:
 - (i) Appeals of the denial, revocation, restriction or probation involving an adult day care center license or the placement of an adult day care center on probation pursuant to T.C.A. §§ 71-2-401 et seq.;
 - (ii) Child support-related appeals as required by Title 36, Chapter 5 of the Tennessee Code Annotated;
 - (iii) Child care agency appeals of license denials, restrictions, revocations, civil penalties and safety plans pursuant to T.C.A. § 71-3-509 which shall be made in writing to the Director of Child Care Licensing and are heard only by the Child Care Agency Board of Review;
 - (iv) Child care agency appeals of report card assessments pursuant to Chapter 1240-4-7;
 - (v) Child care agency license probations and suspensions pursuant to T.C.A. § 71-3-509;

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- (vi) Summer Food Service Program and Child and Adult Care Food Program appeals as provided in State Rule 1240-5-8-.01(8) and (9); and
 - (vii) Tennessee Blind Enterprises appeals as provided in State Rule 1240-5-3-.03(j)2.
- (5) The Appeals and Hearings Division may process an informal resolution of an appeal as provided in State Rule 1240-5-3-.04(4) and (5).
- (6) Food Stamp Cases.
- (a) The Department of Human Services shall offer agency conferences to Food Stamp households that wish to contest a denial of expedited service. The conference shall be scheduled within two (2) working days, unless the household requests that it be scheduled later. The agency conferences shall be attended by an eligibility supervisor and/or the agency director, and by the household and/or its representative.
 - (b) An agency conference may lead to an informal resolution of the dispute. However, a fair hearing must still be held unless the household makes a written withdrawal of its request for a hearing, unless the withdrawal is made as provided in 1240-5-3-.04(4).

Authority: *T.C.A. §§ 4-5-102, 4-5-202, 36-5-1001, 36-5-1002, 71-1-105(12), 71-1-111 and 71-1-132; 71-3-502; 71-3-509; Chapter 1240-4-7; 7 C.F.R. § 273.15; 45 C.F.R. § 205.10; and 42 C.F.R. §§ 431.220 and 431.221.*

Rule 1240-5-3-.02 Information Regarding Right To Appeal, is amended by deleting the rule in the entirety and by substituting the following new language, so that, as amended, the rule shall read as follows:

1240-5-3-.02 INFORMATION REGARDING RIGHT TO APPEAL.

- (1) Every applicant for or recipient of services shall be informed at the time of application and at the time of any action affecting his/her claim to assistance or services:
 - (a) Of his/her right to a fair hearing;
 - (b) Of the method by which he/she may obtain a hearing;
 - (c) Of his/her right to be represented by an authorized representative, such as legal counsel, relative, or friend. Information and referral services shall be provided to help claimants make use of any legal services available in the community that can provide legal representation at the hearing.
- (2) Advance written notification.
 - (a) Notice of intended action to discontinue, terminate, suspend, or reduce assistance or services shall be given in writing to recipients in the Families First Program (including Refugee Cash Assistance), Food Stamp Program and the Medicaid Program under Title XIX of the Social Security Act (42 U.S.C. §§1396 et seq.), including TennCare Standard, cases at least ten (10) days in advance before the date of intended action.
 - (b) Advance written notification of intended action in Vocational Rehabilitation Services cases is governed by State Rule 1240-5-1-.05(02) - (4).

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(c) Notice of Appeal Rights in Child Support Administrative Actions.

Unless advance notice is not permitted by federal or state law, the obligor, obligee, or other caretaker of a child in a child support case that is subject to administrative action and that is being enforced by the Department under Title IV-D of the Social Security Act shall be given at least ten (10) days advance notice. The notice shall contain information regarding the time frames for appeal and how to file an appeal as set forth by statute and Department child support regulations.

(d) Notice of administrative actions affecting licenses of adult day care centers shall be provided pursuant to T.C.A. § 71-2-408 and Chapter 1240-7-10.

(e) Notice of administrative actions affecting licenses of child care agencies shall be provided pursuant to T.C.A. § 71-3-509 and Chapter 1240-4-5.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 71-1-105(12), 36-5-701 et seq., and 36-5-1001—1003; 29 U.S.C. § 722(a)(5) and (c)(2); 7 C.F.R. § 273.13(a)(1); 34 C.F.R. § 361.57(b)(2)(iv) and (b)(4); 42 C.F.R. § 431.211; 45 C.F.R. § 205.10(a)(4)(i)(A) and 45 C.F.R. § 400.54.

Rule 1240-5-3-.03, Time Limit For Filing An Appeal, is amended by deleting the rule in its entirety and by substituting instead the following new language, so that, as amended, the rule shall read as follows:

1240-5-3-.03 TIME LIMIT FOR FILING AN APPEAL.

- (1) Appeals or requests for a hearing will be accepted only if they are filed within the required time limit unless good cause can be shown as to why the appeal or request for a hearing could not be filed within the required time limit; provided, however, no good cause will be permitted for TennCare Standard/TennCareMedicaid eligibility reform disenrollment appeals. (State Rule 1240-5-3-.03(1)(l)3(vi)(III) governs the restriction on good cause extensions and untimely appeals for disenrollment related to TennCare Standard and TennCare Medicaid eligibility reforms).

(a) Adult and Community Services Program Appeals.

1. Except as otherwise specified by these rules or laws or regulations specifically applicable to a program, appellants or individuals acting in their behalf involving Adult and Community Services programs, including persons dissatisfied with services provided directly by the Department, or persons who are dissatisfied with the grievance hearing decision involving assistance/services provided through Department grantees, in the:

- (i) Emergency Shelter Grant Program;
- (ii) Low Income Home Energy Assistance Program;
- (iii) Weatherization Assistance Program;
- (iv) Community Services Block Grant Programs;
- (v) Social Services Block Grant Programs;
- (vi) Refugee Services Program;

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(vii) Adult Day Care Services Program; or

(viii) Homemaker Program,

will be allowed thirty (30) days commencing from the date of the notice of action or notice of intended action to appeal any action of the Department, or action of the Department's grantee under the Department grantee's local level grievance process, in regard to denial, reduction, or termination of a service, or failure to act upon a request for service with reasonable promptness. The appellant will be allowed thirty (30) days to appeal the local level grantee grievance decision to the Department.

(b) Adult Day Care Licensing Appeals.

1. The appeal of denials, revocations, or restrictions of the license of an adult day care center licensed by the Department pursuant to T.C.A. §§ 71-2-401 et seq. shall be made by petition in writing to the commissioner within ten (10) days of the date of the mailing of notice by the Department to the applicant/licensee.
2. The appeal of the decision to continue probation for an adult day care center shall be filed in writing within five (5) business days of the receipt of the notice of the Department's decision regarding the review of the probationary status pursuant to T.C.A. § 71-2-409(2) and (3).

(c) Child and Adult Care Food Program Appeals. 7 C.F.R. § 226.6 and State Rule 1240-5-8-.01(9) govern appeals in the Child and Adult Care Food Program.

1. Applicants and participating institutions and responsible principals and responsible individuals and day care homes will be allowed fifteen (15) days from the date on which notice of action, sent by certified mail, return receipt requested, is received to appeal an action of the Department of Human Services as allowed under 7 C.F.R. § 226.6(k)(2) and 7 C.F.R. § 226.6(l)(2) and (3).
2. The receipt of the appeal requesting an administrative review pursuant to this subparagraph (c) must be acknowledged by the Department within ten (10) days of receiving the request.
3. Where inconsistencies are present between the requirements of the Tennessee Uniform Administrative Procedures Act, as amended, and the Federal regulations governing the Child and Adult Care Food Program, appeals of the Child and Adult Care Food Program will be processed in accordance with 7 C.F.R. § 226.6(k) and 226.6(l) and State Rule 1240-5-8-.01(9) and not the Uniform Administrative Procedures Act.

(d) An appeal of an agency's dispute of the result of the Intradepartmental Review of a child care agency program assessment under Chapter 1240-4-7, shall be submitted to the Commissioner in writing within (10) business days of receiving the Department's written decision regarding the Review.

(e) Criminal history exclusions for persons having access to children in child care agencies or having access to adults in adult day care centers pursuant to T.C.A. §§ 71-2-403(a) and 71-3-509(e) and (f) shall be filed within ten (10) days of the mailing date of the notice of exclusion or denial of a waiver of the exclusion.

(f) Child Support Appeals.

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Timely filed child support appeals shall be in writing and shall be filed within:

1. Twenty (20) days from the date of service of the notice in license revocation proceedings, such as professional, business, fishing, hunting licenses, etc. under T.C.A. §§ 36-5-701 et seq.; and
 2. Fifteen (15) days of the date of the notice of administrative action for all other appeals as governed under T.C.A. §§ 36-5-1001 et seq. and for all other administrative actions where otherwise not established by statute.
- (g) Families First Program appellants or individuals acting in their behalf will be allowed ninety (90) days commencing from the date of the advance written notice of intended action to appeal any action of the Department.
- (h) Food Stamp Appeals.
1. A Food Stamp household or its representative shall be allowed to request a fair hearing on any adverse action by the Department of Human Services within ninety (90) days of the date of such action as established by the date of the notice to the household of such action. In the event an appellant successfully appeals an adverse action, such appellant will only be entitled to receive retroactive benefits from the date that is twelve (12) months prior to the date upon which the beneficiary requests such retroactive benefits.

For example, a beneficiary begins receiving benefits from the Food Stamp Program on January 1, 2000. On January 1, 2003, the beneficiary determines that the amount of benefits that she has been receiving is incorrect; she actually should have been receiving a greater amount of Food Stamp benefits since she first entered the program on January 1, 2000. On January 2, 2003, the beneficiary contacts her local DHS office to request that her benefits be increased according to her calculations and that she receive retroactively the benefits that she believes she should have been entitled to since January 1, 2000. DHS sends the beneficiary a written notice on January 30, 2003, which states that DHS is denying her request for increased benefits and retroactive benefits. The beneficiary timely appeals this determination on February 15, 2003 and is informed that she won the appeal on March 31st, 2003. The beneficiary would be entitled to have her benefits increased going forward, and she would be entitled to retroactive benefits from January 2, 2002. the date of the request, to present. She would not be entitled to retroactive benefits from January 1, 2000 through January 1, 2002, because this period is more than twelve months prior to the date when the beneficiary first requested the retroactive benefits, January 2, 2003.

- (i) Refugee Assistance Program appellants or individuals acting in their behalf will be allowed ninety (90) days commencing from the date of the advance written notice of intended action to appeal any action of the Department.
- (j) Rehabilitation Services Appeals.
1. Vocational Rehabilitation Services Appeals.
 - (i) Vocational Rehabilitation Services appellants or individuals acting in their behalf, as set forth in Tennessee State Rule 1240-5-1-.05, will be allowed thirty (30) calendar days after the date of notification of the Informal Administrative

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Review finding to appeal any action of the Department with regard to the furnishing of, denial of, or failure to deliver Vocational Rehabilitation Services, subject to good cause exceptions as determined by the Appeals and Hearings Division.

- (ii) If the appellant or appellant's representative elects not to utilize the Informal Administrative Review, the appeal, as specified in State Rule 1240-5-1-.05(9), must be filed within thirty (30) calendar days of the date of the notice by the Division of Rehabilitation Services to the appellant of the action with regard to the furnishing of, denial of, or failure to deliver Vocational Rehabilitation Services, subject to good cause exceptions as determined by the Appeals and Hearings Division.

2. Tennessee Blind Enterprises Appeals.

- (i) A manager in the Tennessee Blind Enterprises program who is dissatisfied with any action arising from the operation or administration of the vending facility program may ask for a review of the action as permitted by State Rule 1240-6-11-.01 by filing a written request within thirty (30) days of the Department's action with the Director of the Services for the Blind Division, Tennessee Department of Human Services; or the manager may file an appeal by a written request by the manager, or by a representative selected by the manager, within thirty (30) days of the agency's action from which the grievance arises or within fifteen (15) days following the manager's receipt of an administrative review decision issued by the Director of Services for the Blind Division pursuant to rule 1240-6-11-.01. Receipt is deemed to be five (5) days from the date of mailing for purposes of this subpart.
- (ii) Appeals and arbitration proceedings related to the Randolph-Sheppard Act or the Tennessee Business Enterprises Program will be accepted only if they are filed within the time limits specified in this Chapter and State Rules 1240-6-11-.02 and .03, and must be appealed as set forth in those rules; provided, however, time frames for filing petitions for appeals, reconsideration of initial orders and final orders and stays of effectiveness of those orders in contested case proceedings conducted under the Administrative Procedures Act shall be governed by this Chapter.

- (k) Summer Food Service Program Appeals. 7 C.F.R. § 225.13 and State Rule 1240-5-8-.01(8) govern appeals in the Summer Food Service Program.

1. Applicants and participants will be allowed ten (10) days from the date on which the notice of action, sent by certified mail return receipt requested, is received to appeal an action of the Department of Human Services as allowed under 7 C.F.R. § 225.13(a).
2. Where inconsistencies are present between the requirements of the Tennessee Uniform Administrative Procedures Act, as amended, and the Federal regulation, appeals of the Summer Food Service Program will be processed in accordance with 7 C.F.R. § 225.13 and State Rule 1240-5-8-.01(8), and not the Uniform Administrative Procedures Act.

- (l) TennCare Standard and TennCare Medicaid Appeals.

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1. Appeal Time Frames.

Requests for appeals for Medicaid Program applicants and recipients or individuals acting in their behalf under Title XIX of the Social Security Act (42 U.S.C. §§ 1396 et. seq.) and TennCare Standard applicants or enrollees must be made within forty (40) calendar days (inclusive of mail time) of the date of the notice to the applicant/enrollee regarding the intended action or prior to the date of action specified in the notice, whichever is later; provided, however, that if the TennCare Bureau enacts a different appeal time, such time frame shall supersede the time frame set forth in this part 1.

2. Requirement for Valid Factual Dispute.

- (i) TennCare Medicaid and TennCare Standard appellants will be given the opportunity to have an administrative hearing before a hearing official, as determined by the Appeals and Hearings Division if the appeal presents a valid factual dispute regarding an adverse administrative action.
- (ii) If the Appeals and Hearings Division makes an initial determination that an appeal does not present a valid factual dispute, then the Appeals and Hearings Division will send the appellant a letter asking him or her to submit additional clarification regarding the appeal within ten (10) days (inclusive of mail time). Unless such clarification is timely received and is determined by the Appeals and Hearings Division to establish a valid factual dispute, a fair hearing will not be granted.
- (iii) The Appeals and Hearings Division's decisions with respect to determination of whether an appeal raises a valid factual dispute shall not be appealable.

3. Appeal Rights for Disenrollment Related to TennCare Standard and TennCare Medicaid Eligibility Reforms.

- (i) TennCare Medicaid and TennCare Standard enrollees, who have not been determined eligible for open Medicaid categories pursuant to the Ex Parte Review or Request for Information processes described in State Rules 1200-13-13-.02 and 1200-13-14-.02, will have the right to request a hearing forty (40) days (inclusive of mail time) from the date of the Termination Notice.
- (ii) Such appeals will be conducted by the Appeals and Hearings Division for TennCare Medicaid and TennCare Standard applicants/enrollees in accordance with these administrative procedures rules, and in accordance with any other applicable rules, laws or court orders governing those programs.
- (iii) Enrollees will not have the opportunity to request an extension for good cause of the forty (40) day time frame in which to request a hearing.
- (iv) Enrollees who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of notice or prior to the date of termination specified in the Termination Notice, whichever is later, shall retain their eligibility (subject to any changes in covered services generally applicable to enrollees in their TennCare category) pending a determination that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.

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- (v) The Appeals and Hearings Division is designated by the TennCare Bureau to review each request for hearing to determine if it is based on a valid factual dispute. Enrollees will be given the opportunity to have an administrative hearing before a hearing official, as determined by the Appeals and Hearings Division, regarding valid factual disputes related to termination. If the Appeals and Hearings Division makes an initial determination that the request for a hearing is not based on a valid factual dispute, the appellant will receive a notice which provides ten (10) days (inclusive of mail time) to provide additional clarification of any factual dispute on which his/her appeal is based. Unless such clarification is timely received and is determined by the Appeals and Hearings Division to establish a valid factual dispute, a fair hearing will not be granted.
 - (vi) The Appeals and Hearings Division will grant hearings under this subparagraph (I) only for those enrollees raising valid factual disputes related to the action of disenrollment. A valid factual dispute is a dispute that, if resolved in favor of the appellant, would prevent the state from taking the adverse action that is the subject of the appeal. Appeals that do not raise a valid factual dispute will not proceed to a hearing. Valid factual disputes include, but are not limited to:
 - (I) Enrollee received the Termination Notice in error (e.g., they are currently enrolled in a TennCare Medicaid or TennCare Standard category that is not ending);
 - (II) The Department failed to timely process information submitted by the enrollee during the requisite time period following the Request for Information or Verification Request;
 - (III) The Department granted a “good cause” extension of time to reply to the Request for Information Notice, but failed to extend the time (this is the only circumstance surrounding good cause which can be appealed with respect to disenrollment appeals);
 - (IV) Enrollees requested assistance because of a health, mental health, learning problem or disability, but did not receive this assistance; or
 - (V) The TennCare Bureau sent the Request for Information or Termination Notice to the wrong address as defined under state law.
 - (vii) If the enrollee does not appeal prior to the date of termination as identified in the Termination Notice, the enrollee will be terminated from TennCare.
 - (viii) If the enrollee is granted a hearing and the hearing decision sustains the State’s action, the State reserves its right to recover from the enrollee the cost of services provided during the hearing process.
4. Appeals regarding recertification of enrollees in the Core Medicaid Population, as such term is defined in State Rule 1200-13-13-.01 will be processed in accordance with State Rule 1200-13-13-.12. All other appeals regarding recertification of TennCare Medicaid and TennCare Standard eligibility shall be processed in accordance with the Rules of the Department of Human Services, in conjunction with the applicable rules of the TennCare Bureau regarding eligibility criteria.

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(2) Continuation of Assistance or Services Pending Appeal.

(a) Continuation of Eligibility for Assistance or Services in Food Stamp and Families First Program Appeals.

Assistance for a recipient in the Families First and Food Stamp programs shall continue pending the appeal, until such determination is made under 1240-5-3-.03(2)(d) below, if the appeal is received within ten (10) days from the date of the advance written notice of intended action, unless the appellant specifically requests assistance or services not be continued while the appeal is pending.

(b) Continuation of Assistance or Services in the TennCare Medicaid and TennCare Standard Programs. (State Rule 1240-5-3-.03(1)(l)3 above governs the continuation of assistance or services for appeals for disenrollment related to TennCare Standard and TennCare Medicaid eligibility reforms).

1. Enrollees who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of notice or prior to the date of action specified in the notice, whichever is later, shall retain their eligibility (subject to any changes in covered services generally applicable to enrollees in their TennCare category) pending a determination by the Appeals and Hearings Division that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first. If the appeal results in the State's action being sustained, the State reserves its right to recover from the enrollee the cost of services provided to the enrollee during the pendency of the appeal.

2. Benefit Level Continuation in TennCare Medicaid and TennCare Standard Programs.

(i) Enrollees disputing the applicability of changes in coverage to their current TennCare category who request a hearing within twenty (20) calendar days (inclusive of mail time) of the date of the notice or prior to the date of action specified in the notice, whichever is later, shall, notwithstanding State Rule 1240-5-3-.03(2)(b)1 above, continue to receive benefits pending a determination by the Appeals and Hearings Division that the appellant has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.

(ii) If the enrollee does not clearly allege the applicability of a particular eligibility category, benefits will be continued at the level for Non-Institutionalized Medicaid Adults pending a determination by the Appeals and Hearings Division that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.

(iii) If the Appeals and Hearings Division subsequently determines that the enrollee is alleging that a particular eligibility category is currently applicable, benefits will be prospectively continued at the level for such eligibility category pending a determination by the Appeals and Hearings Division that the enrollee has not raised a valid factual dispute or until the appeal is otherwise resolved, whichever comes first.

(c) If the recipient can show good cause existed for the failure to appeal within the time frames in subparagraphs (a) for the Food Stamp and Families First Programs and (b)

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for the TennCare Medicaid and TennCare Standard Programs, assistance or services may be reinstated or continued pending appeal; provided, however, State Rule 1240-5-3-.03(1)(l)3(vi)(III) above governs the restriction on good cause extensions and untimely appeals for disenrollment related to TennCare Standard and TennCare Medicaid eligibility reforms.

- (d) Once continued, the assistance or services designated in subparagraphs (a) for the Food Stamp and Families First Programs and (b) for the TennCare Medicaid and TennCare Standard Programs will, nevertheless, cease as of the earliest of the following events:
 - 1. As provided in State Rule 1240-5-3-.03(2)(b)1 and 2 above for TennCare Standard or TennCare Medicaid appeals; or
 - 2. A change affecting the recipient's assistance occurs while the hearing decision is pending and the recipient fails to request a hearing after notice of the change; or
 - 3. In Food Stamp cases, the certification period ends; or
 - 4. A final decision is made by the agency that the appellant is not entitled to the assistance or services.
- (e) Continuation of services in Vocational Rehabilitation Services appeals are governed under State Rule 1240-5-1-.05(5) and State Rule 1240-5-1-.05(10)(b).
- (f) Continuation of services in Summer Food Service Program appeals are governed under 7 C.F.R. § 225.13(11) and State Rule 1240-5-8-.01(8).
- (g) Continuation of services in Child and Adult Care Food Program appeals are governed under 7 C.F.R. § 226.6(k)(10) and State Rule 1240-5-8-.01(9).
- (h) Title IV-D child support services shall continue if an appeal of the termination of services is filed within sixty (60) days of the date of the notice of the proposed closure of the case.
- (i) Continuation of services in Refugee Cash Assistance Program appeals are governed under 45 C.F.R. § 400.54.
- (j) Continuation of services in appeals for other Programs administered by the Department are contingent upon other Federal regulations applicable to the Program.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 4-5-307, 71-1-105, 71-2-408; 71-3-151, 71-3-154, 71-4-508, 71-4-610, 71-5-106, 71-5-110 and 71-5-305; 7 U.S.C. § 2020(b) and (e)(10) and (e)(11); 20 U.S.C. §§ 107d-1 and 107b(6); 29 U.S.C. § 722(c); 42 U.S.C. §§ 1396 et seq.; 42 U.S.C. §§ 1761 and 1766; 42 U.S.C. § 6851; 42 U.S.C. § 8624; 7 C.F.R. §§ 225.13, and 226.6; 7 C.F.R. §§ 273.13, 273.13(a)(1), 273.13(a)(3)(v), 273.15 (g) and (k); 273.17; 34 C.F.R. §§ 361.48 and 361.57; 34 C.F.R. §§ 395.4 and 395.13; 42 C.F.R. §§ 431.200 et seq.; 42 C.F.R. §§ 431.210, 431.211, 431.221, 431.230 and 431.231; 45 C.F.R. § 205.10(a)(4)(i)(A) and (ii)(K); 45 C.F.R. § 205.10(a)(5)(iii) and (a)(6) and (7); and 45 C.F.R. §§ 400.23, 400.54 and 400.145.

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Rule 1240-5-3-.04, Dismissal of Hearing Requests, is amended by deleting the rule in the entirety, and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-5-3-.04 DISMISSAL OF HEARING REQUESTS.

- (1) The Department may dismiss a request for hearing if it has been withdrawn by the appellant in writing or if it is abandoned. Abandonment may be deemed to have occurred if the appellant, or the authorized representative, without good cause fails to appear at the scheduled hearing.
- (2) The Department may dismiss a previously accepted appeal, upon evidence presented at a “good cause” hearing, pre-hearing conference, or in the pleadings that the appeal was not timely filed and that “good cause” for the lack of timely filing did not exist.
- (3) Upon appropriate proof, the Department may dismiss an appeal at any point in the hearing process for any of the reasons that the appeal might be denied by the Appeals and Hearings Division by rule or law, if such facts had been known by the Appeals and Hearings Division before the appeal was accepted for hearing.
- (4) Dismissal Process for Informally Resolved Appeals in Food Stamp Program.
 - (a) The Department may dismiss a request for a fair hearing when the Appeals and Hearings Division determines the appeal has been resolved in the appellant’s favor and the appellant has expressed orally that he/she wishes to withdraw the request for a hearing.
 - (b) In such case, prior to dismissal of the appeal, the Appeals and Hearings Division will provide a written notice of confirmation to the appellant within ten (10) days of the appellant’s oral expression to withdraw the request for a fair hearing. The written notice will advise the appellant that he/she has ten (10) days from the date of the written notice confirming the withdrawal of the request for a hearing to notify the Appeals and Hearings Division that he/she wishes to reinstate the fair hearing request. If reinstatement is requested, the appeal will proceed to a hearing.
- (5) Dismissal Process for Informally Resolved Appeals in Other Programs.
 - (a) The Department may dismiss a request for a fair hearing when the Appeals and Hearings Division determines the appeal has been resolved in the appellant’s favor.
 - (b) In such case, the Appeals and Hearings Division will provide a written notice to the appellant that the appeal has been resolved. The written notice will advise the appellant that he/she has ten (10) days from the date of the written notice to notify the Appeals and Hearings Division that he/she wishes to reinstate the fair hearing request. If reinstatement is requested, the appeal will proceed to a hearing.
- (6) The Department may dismiss requests for hearings, regarding the TennCare and Medicaid programs if the appeal does not present a valid factual dispute. (The valid factual dispute process is provided in 1240-5-3-.03(1)(l)2, 3 and 4).

Authority: *T.C.A. §§ 4-5-202, 4-5-301, 71-1-105(12), 71-1-111 and 71-1-132; 42 C.F.R. § 431.223; 45 C.F.R. § 205.10(a)(5)(v); and 7 C.F.R. § 273.15 (d) and (j).*

Rule 1240-5-3-.05, Group Hearings, is amended by deleting the “Authority” section under the rule and by substituting instead the following, so that as amended, the Authority section under the rule shall read as follows:

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Authority: *T.C.A. §§ 4-5-202, 4-5-301 et seq., 71-1-105(12) and 71-1-111; 7 C.F.R. § 273.15(e); 42 C.F.R. § 431.222 and 45 C.F.R. § 205.10(a)(5)(iv).*

Chapter 1240-5-3, Fair Hearing Requests, is amended by adding a new subchapter to be titled 1240-5-3-.06, "Time", and by amending the Table of Contents accordingly, so that, as amended, the new subchapter shall read as follows:

1240-5-3-.06 TIME.

- (1) In computing any period of time prescribed or allowed by statute, rule, or order, the time within which any act provided by law is to be done shall be computed by excluding the first day and including the last, unless the last day is a Saturday, a Sunday, or a legal holiday, and then it shall also be excluded. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and legal holidays shall be excluded in the computation. The Notice of Hearing will provide notice of this provision or inform the applicants/recipients of the specific calendar dates by which certain actions must be taken.
- (2) Except in regard to petitions for appeal, reconsideration or review under T.C.A. §§ 4-5-315, 4-5-317 and 4-5-322, or except where otherwise prohibited by law, when an act is required or allowed to be done at or within a specified time, the hearing official may, at any time—
 - (a) With or without motion or notice, order the period enlarged if the request is made before the expiration of the period originally prescribed or as extended by previous order, or
 - (b) Upon motion made after the expiration of the specified period, permit the act to be done late, where the failure to act was the result of excusable neglect. Nothing in this section shall be construed to allow any ex parte communications concerning any issue in the proceeding that would be prohibited by T.C.A. § 4-5-304.
- (3) Any waiver of the time limits in State Rule 1240-5-3-.03 is subject to the approval of the Commissioner or his/her designated representative.

Authority: *T.C.A. §§ 1-3-102, 4-5-202, 4-5-219, 71-1-105(12) and 71-1-111.*

Chapter 1240-5-3, Fair hearing Requests, is amended by adding a new subchapter to be designated 1240-5-3-.07, "Filing and Service of Pleadings and Other Materials", and by amending the Table of Contents accordingly, so that, as amended, the new subchapter shall read as follows:

1240-5-3-.07 FILING AND SERVICE OF PLEADINGS AND OTHER MATERIALS.

- (1) All pleadings and any other materials required to be filed by a time certain following the filing of an appeal shall be filed by delivering such materials in person or by any other manner, including by mail, provided they are actually received by the Administrative Procedures Division or the Department within the required time period.
- (2) Upon the involvement of the Administrative Procedures Division in any contested case, all pleadings and other materials required to be filed or submitted prior to the contested case hearing shall be filed with the designated office, where they will be stamped with the date of their receipt.

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- (3) Petitions for appeal of an Initial Order and for reconsideration or stay of an Initial or Final Order may be filed with the Department or the Administrative Procedures Division, as designated in the order.
- (4) Discovery materials that are not actually introduced as evidence need not be filed, except as provided at rule 1240-5-6-.04.
- (5) Copies of any and all materials filed with the Department or the Administrative Procedures Division in a contested case shall also be served upon all parties, or upon their counsel, and shall contain a statement indicating that copies have been served upon all parties. Service may be by mail or equivalent carrier or by hand delivery.

Authority: T.C.A. §§ 4-5-202, 4-5-311, 71-1-105(12) and 71-1-111.

CHAPTER 1240-5-4 NOTICE OF THE HEARING

AMENDMENTS

Rule 1240-5-4-.01, Notice, is amended by deleting the rule in its entirety, and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-5-4-.01 NOTICE.

- (1) Notice of Hearing. In every contested case, a notice of hearing shall be issued by the Department that shall comply with T.C.A. § 4-5-307(b) and shall be served as provided in 1240-5-4-.01(4) of these rules.
- (2) The hearing shall be conducted at a reasonable time, date, and place after adequate written notice has been given to the appellant.
 - (a) For contested cases in the Families First, Food Stamp, TennCare Medicaid and TennCare Standard programs, adequate written notice shall be sent ten (10) days in advance of the date of the hearing.
 - (b) The notice of hearing in Child and Adult Care Food Program appeals, for actions that are subject to administrative review, is governed under 7 C.F.R. § 226.6(k)(5) and State Rule 1240-5-8-.01(9), and adequate written notice shall be sent ten (10) days in advance of the date of the hearing.
 - (c) The notice of hearing in Summer Food Service Program appeals is governed under 7 C.F.R. § 225.13 and State Rule 1240-5-8-.01(8) and adequate written notice shall be sent five (5) days in advance of the date of the hearing.
 - (d) For Child Support appeals adequate written notice shall be sent fifteen (15) days in advance of the date of the hearing.
 - (e) For Vocational Rehabilitation appeals adequate written notice shall be sent fifteen (15) days in advance of the date of the hearing.
 - (f) For Blind Services appeals adequate written notice shall be sent fifteen (15) days in advance of the date of the hearing.

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- (g) Notice of the revocation or restriction of an existing license for an adult day care center licensed by the Department shall be provided sixty (60) days prior to the hearing.
 - (h) For all other appeals not otherwise specified herein, adequate written notice shall be sent fifteen (15) days in advance of the date of the hearing.
 - (i) The notice periods set forth in this paragraph may be extended for any individual or all programs by direction of the Commissioner's designee in his/her sole discretion except where otherwise limited by statute or federal regulation.
- (3) The notice shall include:
- (a) The date, time, place, and nature of the hearing with instructions to the appellant to notify the Appeals and Hearings Division if he/she is unable to meet the appointment.
 - (b) A statement of the legal authority and jurisdiction under which the hearing is to be held, including a reference to the particular sections of the statutes and rules involved.
 - (c) A short and plain statement of the matters asserted. The notice will define the issues and refer to detailed statements of the matters involved, if available.
 - (d) Information about hearing procedures.
 - (e) The appellant's option to present his/her case or be represented by a lawyer or another authorized person.
 - (f) The appellant's right to inspect the files of the agency with respect to the matter under appeal and to copy from the file.
 - (g) The appellant's right to present written evidence and testimony and to bring witnesses and members of his/her family to the hearing.
 - (h) The process by which an appellant may petition for reconsideration of an initial or final order, if applicable.
 - (i) The process by which an appellant may appeal an initial order, if applicable.
 - (j) The appellant's right to judicial review, if he/she is dissatisfied with the final order entered on his/her appeal.
 - (k) Supplemented Notice.
- In the event it is impractical or impossible to include in one document every element required for notice, elements such as time and place of hearing may be supplemented in later written notice.
- (4) Service of Notice of Hearing.
- (a) In any case in which an appellant in TennCare Standard or TennCare Medicaid, Families First or Food Stamp has requested a hearing from the Department, a copy of the notice of hearing shall be delivered to the party by certified mail, postage prepaid or by personal service. Service of notice of the hearing for other programs administered by the Department shall be served by any method permitted or required by law or program regulations governing those programs.

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- (b) Service of the notice of hearing for TennCare Standard or TennCare Medicaid cases shall be made at the address required to be kept current by the applicant/recipient with the Department by T.C.A. §§ 71-5-106(l) and 110(c)(1), or such other address as the Department of Human Services may have for applicant/recipients of Families First or Food Stamp or other programs, and at the address provided with the request for hearing, if different from the address on file with the Department. However, the Department shall use the best address known to it, whether provided directly by the applicant/recipient or whether obtained indirectly.
- (c) In the event of a motion for default where there is no indication of actual service on a party, the following circumstances will be taken into account in determining whether to grant the default:
 - 1. Whether any other attempts at actual service were made;
 - 2. Whether and to what extent actual service is practicable in any given case;
 - 3. What attempts were made to make contact with the party by telephone, by regular mail, or otherwise; and
 - 4. Whether the Department has actual knowledge or reason to know that the party may be located elsewhere than the address to which the notice was mailed.
- (5) Filing of Documents. When a contested case is commenced, if the matter is being heard by the Administrative Procedures Division, the Department shall provide the Administrative Procedures Division with all the papers that make up the notice of hearing and with all pleadings, motions, and objections, formal or otherwise, that have been provided to or generated by the Department concerning that particular case. Legible copies may be filed in lieu of originals.
- (6) Answer. The party may respond to the matters set out in the notice or other original pleading by filing a written answer with the Department in which the party may:
 - (a) Object to the notice upon the ground that it does not state acts or omissions upon which the Department may proceed;
 - (b) Object on the basis of lack of jurisdiction over the subject matter;
 - (c) Object on the basis of lack of jurisdiction over the person;
 - (d) Object on the basis of insufficiency of the notice;
 - (e) Object on the basis of insufficiency of service of the notice;
 - (f) Object on the basis of failure to join an indispensable party;
 - (g) Generally deny all the allegations contained in the notice or state that he/she is without knowledge as to each and every allegation, both of which shall be deemed a general denial of all charges;
 - (h) Admit in part or deny in part allegations in the notice and may elaborate on or explain relevant issues of fact in a manner that will simplify the ultimate issues; and
 - (i) Assert any available defense.
- (7) Amendment to Notice.

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- (a) The notice or other original pleading may be amended within two (2) weeks from service of the notice and before an answer is filed, unless the respondent shows that undue prejudice will result from this amendment. Otherwise the notice or other original pleading may only be amended by written consent of the respondent or by leave of the hearing official or Commissioner's designee, and leave shall be freely given when justice so requires.
 - (b) No amendment to the notice may introduce a new statutory or regulatory basis for denial or termination of enrollment without original service and running of times applicable to service of the original notice.
 - (c) The hearing official shall not grant a continuance to amend the notice or original pleading if such would prejudice a respondent's right to a hearing and Initial Order within any mandatory time frames.
- (8) Amendments to Conform to the Evidence.
- (a) When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time; but failure to amend for this reason does not affect the result of the determination of these issues.
 - (b) If evidence is objected to at the hearing on the ground that it is not within the issues in the pleadings, the hearing official may allow the pleadings to be amended unless the objecting party shows that the admission of such evidence would prejudice his defense. The hearing official may grant a continuance to enable the objecting party to have reasonable notice of the amendments. However, when the individual is not represented by counsel, the burden cannot be put on such individual to object to the State's trying of cases without proof and legal authorities set out in the pleadings, and the hearing official shall rule on whether to allow additional evidence and the need for continuances to enable the respondent further time to address the new grounds.

Authority: *T.C.A. §§ 4-5-202; 4-5-307; 71-1-105(12) and 71-1-111.*

Rule 1240-5-4-.03, Subpoenas for Evidence and Witnesses, is amended by deleting the rule in the entirety, and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-5-4-.03 SUBPOENAS FOR EVIDENCE AND WITNESSES.

- (1) The Department shall have the authority in an administrative hearing to require the attendance of such witnesses and the production of such books, records, papers, or other tangible things as may be necessary and proper for the purpose of the hearing proceeding. The hearing official at the request of any party shall issue signed subpoenas in blank in accordance with the Tennessee Rules of Civil Procedure, except that service in contested cases may be by certified return receipt mail in addition to means of service provided by the Tennessee Rules of Civil Procedure. Parties shall complete and serve their own subpoenas.
- (2) Upon motion of a party, the hearing official may at or before the time specified in the subpoena for compliance:
 - (a) Void or modify the subpoena if it is unreasonable and oppressive, or

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- (b) Tax the party making the request with reasonable costs in the production of books, papers, documents, or other tangible things. T.C.A. § 4-5-311 provides that an agency may promulgate rules to prevent abuse and oppression in discovery. The Department's rules at 1240-9-1 establish reasonable fees and costs for reproduction of records and those rules shall be used as general guidelines for the taxing of such costs; provided that in unique or unusual cases, the hearing official may deviate from those guidelines as justice requires.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-311, 71-1-105(12) and 71-1-111.

Chapter 1240-5-4, Notice Of The Hearing, is amended to insert a new subchapter to be titled 1240-5-4-.04, "Representation By Counsel", and by amending the Table of Contents accordingly, so that as amended the new subchapter shall read as follows:

1240-5-4-.04 REPRESENTATION BY COUNSEL.

- (1) Any party to a contested case hearing may be advised and represented, at the party's own expense, by a licensed attorney.
- (2) Any party to a contested case may represent himself or herself or, in the case of a corporation or other artificial person, may participate through a duly authorized representative such as an officer, director or appropriate employee.
- (3) A party to a contested case hearing may not be represented by a non-attorney, except in any situation where federal law requires or state law specifically permits.
- (4) The Department shall notify all parties in a contested case hearing of their right to be represented by counsel. An appearance by a party at a hearing without counsel may be deemed a waiver of the right to counsel.
- (5) Entry of an appearance by counsel shall be made by:
 - (a) The filing of pleadings;
 - (b) The filing of a formal or informal notice of appearance; or
 - (c) Appearance as counsel at a pre-hearing conference or a hearing.
- (6) After appearance of counsel has been made, all pleadings, motions, and other documents shall be served upon such counsel.
- (7) Counsel wishing to withdraw shall give written notice to the Appeals and Hearings Division, or the Department of State, Administrative Procedures Division when applicable, and the hearing official.
- (8) Out-of-state counsel shall comply with T.C.A. § 23-3-103(a) and Supreme Court Rule 19, except that the affidavit referred to in Supreme Court Rule 19 shall be filed with the director of the Appeals and Hearings Division or Administrative Procedures Division, when applicable, with a copy to the hearing official presiding in the matter in which counsel wishes to appear.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-301, 4-5-305, 4-5-312, 71-5-105(12) and 71-1-111.

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Chapter 1240-5-4, Notice Of The Hearing, is amended by adding a new subchapter to be designated 1240-5-4-.05, "Pre-hearing Motions", and by amending the Table of Contents accordingly, so that, as amended, the new subchapter shall read as follows:

1240-5-4-.05 PRE-HEARING MOTIONS.

(1) Motions.

- (a) Scope. This rule applies to all motions made prior to a hearing on the merits of a contested case.
- (b) Parties to a contested case are encouraged to resolve matters on an informal basis; however, if efforts at informal resolutions fail, any party may request relief in the form of a motion by serving a copy on all parties and by filing the motion with the Administrative Procedures Division, the Department of Human Services' Appeals and Hearings Division or directly with the hearing official.
- (c) Any such motion shall set forth a request for all relief sought, and shall set forth grounds which entitle the moving party to relief.
- (d) A motion shall be considered submitted for disposition seven (7) days after it was filed, unless oral argument is granted, or unless a longer or shorter time is set by the hearing official.
- (e) Telephonic, Televised and Alternate Electronic Methods for Conducting Hearings and Pre-hearing Conferences.

In the discretion of the hearing official, and with the concurrence of the parties, any pre-hearing conference, may be conducted by telephone, television, or other electronic means, if each participant in the conference has an opportunity to fully participate in the entire proceeding while it is taking place.

(2) Time Limits; Oral Argument.

- (a) A party may request oral argument on a motion; however, a brief memorandum of law submitted with the motion is preferable to oral argument.
- (b) Each opposing party may file a written response to a motion, provided the response is filed within seven (7) days of the date the motion was filed. If oral argument is requested, the motion may be argued by conference telephone call.

(3) Affidavits; Briefs and Supporting Statements.

- (a) Motions and responses to motions shall be accompanied by all supporting affidavits and briefs or supporting statements. All motions and responses to them shall be supported by affidavits for facts relied upon which are not of record or which are not the subject of official notice. Such affidavits shall set forth only facts which are admissible in evidence under T.C.A. § 4-5-313, and to which the affiants are competent to testify. Properly verified copies of all papers or parts of papers referred to in such affidavits may be attached thereto.
- (b) In the discretion of the hearing official, a party or parties may be required to submit briefs or supporting statements pursuant to a schedule established by the hearing official.

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- (4) Disposition of Motions; Drafting the Order.
 - (a) When a pre-hearing motion has been made in writing or orally, the hearing official shall render a decision on the motion by issuing an order or by instructing the prevailing party to prepare and submit an order in accordance with subparagraph (b) below.
 - (b) The prevailing party on any motion shall draft an appropriate order, unless otherwise directed by the hearing official. This order shall be submitted to the hearing official within five (5) days of the ruling on the motion, or as otherwise ordered by the hearing official.
 - (c) The hearing official, after signing any order, shall cause the order to be served immediately upon the parties.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-301, 4-5-308, 71-1-105(12) and 71-1-111.

Chapter 1240-5-4, Notice of the Hearing, is amended by adding a new subchapter to be designated 1240-5-4-.06, "Continuance", and by amending the Table of Contents accordingly, so that as amended the new subchapter shall read as follows:

1240-5-4-.06 CONTINUANCE.

- (1) Continuances may be granted upon good cause shown in any stage of the proceeding. The need for a continuance shall be brought to the attention of the hearing official as soon as practicable by the appellant, by the Department, or by mutual consent of the parties.
- (2) The maximum time limits for processing appeals are governed under Tennessee Department of Human Services, State Rule 1240-5-8-.01.
- (3) If an appellant requests a continuance, any mandatory deadlines for conducting hearings and issuance of initial orders by a hearing official or commissioner's designee may be extended by a like period of time. Calculation of the applicable time frame may be adjusted only to the extent that any delays are attributable to the beneficiary. The beneficiary shall only be charged with the amount of delay occasioned by the beneficiary's acts or omissions, and any other delays should be deemed to be the responsibility of the Department of Human Services.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-301, 4-5-308, 71-1-105(12) and 71-1-111.

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CHAPTER 1240-5-5 THE ADMINISTRATIVE JUDGE/HEARING OFFICER

AMENDMENTS

Chapter 1240-5-5, "The Administrative Judge/Hearing Officer", is amended by deleting the Chapter in its entirety, and by renaming the Chapter "The Hearing Official" and is further amended by substituting instead the following language, so that, as amended, the Chapter shall read as follows:

CHAPTER 1240-5-5 THE HEARING OFFICIAL

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1240-5-5-.01 ROLE.

- (1) The Commissioner of the Department of Human Services has placed responsibility for hearings in the Appeals and Hearings Division. The hearing official is vested with full authority in the conduct of the hearing process. The hearing official is fully responsible for conducting hearings properly and promptly in accordance with the rules and regulations established by the Department.
- (2) Hearings for an appellant or household involving any program or any other persons/entities entitled to appeal any adverse administrative action may be consolidated by the Commissioner, the Assistant Commissioner for Appeals and Hearings or their designees, or by a hearing official in his or her discretion; provided, however, that if necessary to promote justice or to address issues that require separate hearings for any reason, a consolidated appeal may be separated into individual hearings.

Authority: *TCA §§ 4-5-202, 4-5-312, 36-5-101(f)(1); 71-1-105(12) and 71-1-111: and 42 U.S.C. § 666(a)(9)*

1240-5-5-.02 AUTHORITY.

- (1) The hearing official shall have the authority to do the following:
 - (a) Schedule and conduct the hearing;
 - (b) Administer oaths;
 - (c) Issue subpoenas;
 - (d) Rule upon offers of proof;
 - (e) Regulate the course of the hearing;
 - (f) Set the time and place for continued hearings;

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- (g) Enter an Initial Order stating his/her decision;
 - (h) Rule on petitions for reconsideration of the Initial Order; and
 - (i) Perform those duties or take those actions that are otherwise appropriate and necessary for the fair, timely and adequate administration of the administrative hearing process.
- (2) No hearing official, without the consent of the parties, shall, on the hearing official's own motion, raise and determine issues that were not raised in the notice of hearing, or which were not raised and tried in the course of the hearing.
 - (3) A hearing official is not authorized to forgive any child/spousal support arrearages in a hearing considering an appeal of administrative action by the Department of Human Services in the Child Support program.

Authority: *T.C.A. §§ 4-5-202, 4-5-223, 71-1-105(12), 71-1-111, 71-5-105 and 71-5-109; 7 C.F.R. § 273.15(g); 42 C.F.R. § 431.220 and 42 C.F.R. § 431.221; and 45 C.F.R. § 205.10(a)(5)(iii).*

1240-5-5-.03 ORDER OF PROCEEDINGS.

- (1) Telephonic, Televised and Alternate Electronic Methods for Conducting Hearings and Pre-hearing Conferences.

In the discretion of the hearing official, and with the concurrence of the parties, all or part of the contested case proceeding, including any pre-hearing conference, may be conducted by telephone, television, or other electronic means, if each participant in the conference has an opportunity to fully participate in the entire proceeding while it is taking place.

- (2) Order of proceedings for the hearing of contested cases, including reconsideration hearings:
 - (a) The hearing official may confer with the parties prior to a hearing to explain the order of proceedings, admissibility of evidence, number of witnesses and other matters.
 - (b) The hearing is called to order by the hearing official.
 - (c) The hearing official introduces him/herself and gives a very brief statement of the nature of the proceedings, including a statement of the hearing official's role in making factual and legal rulings.
 - (d) The hearing official then calls on the respondent to ask if the respondent is represented by counsel, and if so, counsel is introduced. The hearing official then introduces the petitioner's counsel and any other officials who may be present at the hearing.
 - (e) The hearing official states what documents the record contains.
 - (f) In appropriate cases, the hearing official or petitioner reads the charges as set out in the notice with regard to the respondent, while giving references to the appropriate statutes and rules.
 - (g) In appropriate cases, the respondent is asked how he or she responds to the charges or disposition of his/her case. If he or she admits the charges or agrees with the disposition of his/her case, no further proof may be necessary, other than introduction of evidence pertaining to the proper penalty, if appropriate. If he or she denies the charges or fails to

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admit them or disagrees with the disposition of any portion of his/her case, the hearing proceeds. (Proceedings involving Families First and Food Stamp Intentional Program Violations are governed under Department of Human Services State Rules at Chapters 1240-5-14 and 1240-5-15.).

- (h) The hearing official swears the witnesses;
- (i) The parties are asked whether they wish to have all witnesses excluded from the hearing room except during their testimony. If so, all witnesses are instructed not to discuss the case during the pendency of the proceeding. Notwithstanding the exclusion of the witnesses, individual parties will be permitted to stay in the hearing room, and the State or any other party that is a corporation or other artificial person may have one appropriate individual, who may also be a witness, act as its party representative;
- (j) Any preliminary motions, stipulations, or agreed orders are entertained;
- (k) Opening statements are allowed by both the petitioner and the respondent;
- (l) Moving party (usually the petitioner) calls witnesses and questioning proceeds as follows:
 - 1. (Petitioner) moving party questions;
 - 2. (Respondent) other party cross-examines;
 - 3. (Petitioner) moving party redirects;
 - 4. (Respondent) other party re-cross-examines;
 - 5. Hearing official questions;
 - 6. Further questions by petitioner and respondent. (Questioning proceeds as long as necessary to provide all pertinent testimony.)
- (m) Other party (usually the Respondent) calls witnesses and questioning proceeds as follows:
 - 1. (Respondent) other party questions;
 - 2. (Petitioner) moving party cross-examines;
 - 3. (Respondent) other party redirects;
 - 4. (Petitioner) moving party re-cross-examines;
 - 5. Hearing official questions;.
 - 6. Further questions by respondent and petitioner. (Questioning proceeds as long as is necessary to provide all pertinent testimony.)
- (n) Petitioner and respondent are allowed to call appropriate rebuttal and rejoinder witnesses with examination proceeding as outlined above;

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- (o) Closing arguments are allowed to be presented by the petitioner and by the respondent;
- (p) The hearing official announces the decision or takes the case under advisement.
- (3) The parties are informed that an Initial Order will be written and sent to the parties and that the Initial Order will inform the parties of their appeal rights.
- (4) Paragraphs (1) – (3) of this rule are intended to be merely a general outline as to the conduct of a contested case proceeding and it is not intended that a departure from the literal form or substance of this outline, in order to expedite or ensure the fairness of proceedings, would be in violation of this rule.

Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-301, 4-5-312, 71-1-105(12) and 71-1-111.

1240-5-5-.04 DEFAULT AND UNCONTESTED PROCEEDINGS.

- (1) Default.
 - (a) The failure of a party to attend or participate in a pre-hearing conference, hearing or other stage of contested case proceedings after appropriate notice of those actions is cause for holding such party in default pursuant to T.C.A. § 4-5-309. Failure to comply with any lawful order of the hearing official, necessary to maintain the orderly conduct of the hearing, may be deemed a failure to participate in a stage of a contested case and shall be cause for a holding of default.
 - (b) If a party fails to attend or participate as provided in subparagraph (a) above, the hearing official, after entering into the record evidence of service of notice to an absent party shall determine whether the service of notice is sufficient as a matter of law, according to State Rule 1240-5-4-.01. If the notice is held to be adequate, the hearing official may do either of the following:
 - 1. Hold the party failing to attend or to participate in default and, after determining that the party in default has the burden of proof, adjourn the proceedings and enter an order of default setting forth the grounds for the default, that will become a Final Order without further notice as provided in State Rule 1240-5-8-.02, unless a timely filed petition for reconsideration is filed; or
 - 2. Hold the party failing to attend or to participate in default and, after determining that the party not in default has the burden of proof, conduct the proceedings without the participation of the defaulting party and include in the Initial Order a written notice of default setting forth the grounds for the default. The Initial Order will become a Final Order without further notice as provided in State Rule 1240-5-8-.02, unless a timely filed Petition for Reconsideration is filed.
 - (c) The hearing official shall serve upon all parties the written notice of entry of default for failure to appear as provided in part (b)1 or 2 above. The defaulting party, no later than fifteen (15) days after service of such notice of default, may file a Petition for Reconsideration as provided in T.C.A. § 4-5-317, requesting that the default be set aside for good cause shown, and stating the grounds relied upon. The hearing official may make any order in regard to such motion as is deemed appropriate, pursuant to T.C.A. § 4-5-317.

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Authority: T.C.A. §§ 4-5-202, 4-5-219, 4-5-309, 4-5-317, 71-1-105(12) and 71-1-111; 42 C.F.R. § 431.223; 45 C.F.R. § 205.10(a)(5)(v); and 7 C.F.R. § 273.15(j)(1)(ii).

CHAPTER 1240-5-6 CONTENT OF THE HEARING

AMENDMENTS

Chapter 1240-5-6, "Content of the Hearing", is amended by deleting the current Chapter name and by substituting instead as the Chapter name "Rules of Evidence and Discovery", so that, as amended, Chapter 1240-5-6 shall read as follows:

CHAPTER 1240-5-6 RULES OF EVIDENCE AND DISCOVERY

AMENDMENTS

Rule 1240-5-6-.01, Rules Of Evidence, is amended by deleting the rule in its entirety, and by substituting the following language, so that, as amended, the rule shall read as follows:

1240-5-6-.01 RULES OF EVIDENCE.

- (1) Evidence in Hearings. In all Department hearings, the testimony of witnesses shall be taken in open hearings, except as otherwise provided by these rules. In the discretion of the Department, or at the motion of any party, witnesses may be excluded prior to their testimony. The standard for admissibility of evidence, including admissibility of affidavits, is set forth at T.C.A. § 4-5-313.
- (2) The hearing official shall admit and give probative effect to evidence admissible in a court, and when necessary to ascertain facts not reasonably susceptible to proof under the rules of court, evidence not admissible thereunder may be admitted if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs. The hearing official shall give effect to the rules of privilege recognized by law and to state or federal statutes or regulations protecting the confidentiality of certain records and shall exclude evidence which in his/her judgment is irrelevant, immaterial or unduly repetitious.
- (3) Documentary evidence otherwise admissible may be received in the form of copies or excerpts, or by incorporation by reference to material already on file with the Department. Upon request, parties shall be given an opportunity to compare the copy with the original, if reasonably available.
- (4) Official notice may be taken of:
 - (a) Any fact that could be judicially noticed in the courts of this state;
 - (b) The record of other proceedings before the Department;
 - (c) Technical or scientific matters within the hearing official's specialized knowledge; and
 - (d) Codes or standards that have been adopted by an agency of the United States, of this state or of another state, or by a nationally recognized organization or association. Parties must be notified before or during the hearing, or before the issuance of any Initial or Final Order that is based in whole or in part on facts or material noticed, of the specific facts

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or material noticed and the source thereof, including any staff memoranda and data, and be afforded an opportunity to contest and rebut the facts or material so noticed.

- (5) Every party shall have the right to present evidence, to make arguments, and to confront and cross-examine witnesses.
- (6) At any time not less than ten (10) days prior to a hearing or a continued hearing, any party shall deliver to the opposing party a copy of any affidavit which such party proposes to introduce in evidence, together with a notice in the form provided in 1240-5-6-.01(8) below. Unless the opposing party within seven (7) days after delivery delivers to the proponent a request to cross-examine an affiant, the opposing party's right to cross-examination of such affiant is waived and the affidavit, if introduced in evidence, shall be given the same effect as if the affiant had testified orally. If an opportunity to cross-examine an affiant is not afforded after a proper request is made as herein provided, the affidavit shall not be admitted into evidence. Delivery for purposes of this paragraph shall mean actual receipt.
- (7) The hearing official assigned to conduct the hearing may admit affidavits not submitted in accordance with paragraph (6) above, where necessary to prevent injustice.
- (8) The notice referred to in 1240-5-6-.01(6) above shall contain the following information and be substantially in the following form:

The accompanying affidavit of _____ (here insert name of affiant) will be introduced as evidence at the hearing in _____ (here insert title of proceeding). _____ (Here insert name of affiant) will not be called to testify orally and you will not be entitled to question such affiant unless you notify _____ (here insert name of the proponent or the proponent's attorney) at _____ (here insert address) that you wish to cross-examine such affiant. To be effective, your request must be mailed or delivered to _____ (here insert name of proponent or the proponent's attorney) on or before _____ (here insert a date seven (7) days after the date of mailing or delivering the affidavit to the opposing party).

Authority: T.C.A. §§ 4-5-202, 4-5-313, 71-1-105(12) and 71-1-111.

Rule 1240-5-6-.04, Discovery, is amended by deleting the rule in its entirety, and by substituting instead the following language, so that, as amended, the rule shall read as follows:

1240-5-6-.04 DISCOVERY.

- (1) Any party to a contested case proceeding shall have the right to reasonable discovery pursuant to T.C.A. § 4-5-311.
- (2) Parties are encouraged to attempt to achieve any necessary discovery informally. When such attempts have failed, or where the complexity of the case is such that informal discovery is not practicable, discovery shall be sought and effectuated in accordance with the Tennessee Rules of Civil Procedure (TRCP).
- (3) Upon motion of a party or upon the hearing official's own motion, the hearing official may order that discovery be completed by a certain date.
- (4) Any motion to compel discovery, motion to quash, motion for protective order, or other discovery related motion shall:

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- (a) Quote verbatim the interrogatory, request, question, or subpoena at issue, or be accompanied by a copy of the interrogatory, request, subpoena, or excerpt of a deposition which shows the question and objection or response if applicable;
 - (b) State the reason or reasons supporting the motion; and
 - (c) Be accompanied by a statement certifying that the moving party or his or her counsel has made a good faith effort to resolve by agreement the issues raised and that agreement has not been achieved. Such effort shall be set forth with particularity in the statement.
- (5) The hearing official shall decide any motion relating to discovery pursuant to the Uniform Administrative Procedures Act (UAPA) and the rules promulgated thereunder or the TRCP.
 - (6) Other than as provided in paragraph (4) above, discovery materials need not be filed with either the Department of State Administrative Procedures Division or the Appeals and Hearings Division.

Authority: *T.C.A. §§ 4-5-202, 4-5-311, 71-1-105(12) and 71-1-111.*

CHAPTER 1240-5-7 THE HEARING REPORT

AMENDMENTS

Chapter 1240-5-7, "The Hearing Report", is amended by deleting the Chapter in its entirety and by renaming the Chapter "The Hearing Record", and is further amended by substituting the following language, so that, as amended, Chapter 1240-5-7 shall read as follows:

CHAPTER 1240-5-7 THE HEARING RECORD

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1240-5-7-.01	Contents of Hearing Record.
1240-5-7-.02	Record of Oral Proceedings.

1240-5-7-.01 CONTENTS OF HEARING RECORD.

- (1) The hearing record shall be maintained for not less than three (3) years.
- (2) Hearing decisions are accessible to the public for inspection and copying, subject to the requirements of safeguarding case information and to the deletion of any portions that are confidential under any provision of law.
- (3) The hearing record shall be available to the appellant or his/her representative at any reasonable time. The record shall include:
 - (a) All pleadings, motions, and intermediate rulings;
 - (b) Exhibits;
 - (c) A summary of the oral testimony plus all other evidence received or considered, stipulations, and admissions;

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- (d) A statement of matters officially noticed;
- (e) Questions and offers of proof, objections, and rulings thereon;
- (f) Findings and conclusions;
- (g) The tape recording, stenographic notes or symbols, or transcript of the hearing;
- (h) Any Final Order, Initial Order, or Order on reconsideration;
- (i) All staff memoranda or data submitted to the hearing official or members of the agency in connection with their consideration of the case;
- (j) Matters placed on the record after an ex parte communication.

Authority: T.C.A. §§ 4-5-202, 4-5-319, 4-5-218(a)-(d), 71-1-105(12) and 71-1-111; 7 C.F.R. § 273.15(q)(1) and (5); 42 C.F.R. § 431.244(g) and 45 C.F.R. § 205.10(a)(14) and (19).

1240-5-7-.02 RECORD OF ORAL PROCEEDINGS. A record (which may consist of a stenographic record, tape or similar electronic recording, or comprehensive notes) shall be made of all oral proceedings. Such record or any part thereof shall be transcribed on request of any party at his/her expense or may be transcribed by the Department at its expense.

Authority: T.C.A. §§ 4-5-202, 4-5-319, 71-1-105(12) and 71-1-111.

CHAPTER 1240-5-8 THE FINAL ORDER

AMENDMENTS

Chapter 1240-5-8, "The Final Order", is amended by deleting the Chapter in its entirety and by renaming the Chapter "The Initial and Final Order" and is further amended by substituting instead the following language, so that, as amended, Chapter 1240-5-8 shall read as follows:

CHAPTER 1240-5-8 THE INITIAL AND FINAL ORDER

TABLE OF CONTENTS

1240-5-8-.01	Appeal Processing Time Frames.
1240-5-8-.02	Initial and Final Orders.
1240-5-8-.03	Public Access to Final Orders.
1240-5-8-.04	Re-instatement of Assistance or Services.
1240-5-8-.05	Recovery of Assistance.

1240-5-8-.01 APPEAL PROCESSING TIME FRAMES.

- (1) The time frames in State Rule 1240-5-8-.01 are an administrative requirement for the Department and may not be used as a basis for overturning the Department's action if a decision is not

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made within the specified time frame, unless otherwise required by Federal or State law or Court Order. The time limit applies to the period extending from the date the request is received by the Department until the date the Final Order is entered, unless otherwise specified.

- (2) State Rule 1240-5-1-.05 sets forth the time limits for processing appeals for Vocational Rehabilitation Services.
- (3) State Rule 1240-6-11-.02 sets forth the time limits for processing appeals related to the Randolph Sheppard Act and the Tennessee Business Enterprises Program.
- (4) The maximum time limit for processing appeals is ninety (90) days for the Families First Program and Services Programs, except as otherwise specified by these rules or laws or regulations specifically applicable to a program.
- (5) Refugee Cash Assistance Program appeals will be processed within sixty (60) days from the date of the hearing request.
- (6) The maximum time limit for processing appeals is ninety (90) days for TennCare Standard or TennCare Medicaid.
- (7) Food Stamp Appeals will be processed within sixty (60) days. The postponement of the scheduled hearing in Food Stamp Appeals shall not exceed thirty (30) days, and the time limit for processing the Food Stamp appeal shall be extended because of:
 - (a) Illness of the appellant;
 - (b) Delay in obtaining medical evidence; or
 - (c) Because of circumstances beyond the control of the appellant or the Department.
- (8) 7 C.F.R. § 225.13 governs appeals in the Summer Food Service Program and the maximum time limit for processing appeals is nineteen (19) days for the Summer Food Service Program as follows:
 - (a) The time period allowed for filing the appeal, where actions are appealable as specified in 7 C.F.R. § 225.13(a), is ten (10) days from the date on which the notice of action sent by certified mail return receipt, is received. The appeal must be in writing.
 - (b) The appellant is allowed to refute the charges in the notice of action in person, or by filing written documentation with the review official. If the appeal letter does not specifically request a hearing, a review of written documentation in lieu of a hearing will occur. To be considered, written documentation must be submitted by the appellant within seven (7) days of submitting the appeal. An appellant is allowed the opportunity to review information upon which the action described in the notice of action was based.
 - (c) If the appellant requested a hearing in the appeal letter, the appellant shall be given at least five (5) days advance written notice of the hearing date by certified mail return receipt.
 - (d) If the appellant requested a hearing in the appeal letter, the hearing will be conducted within fourteen (14) days of the receipt of the appeal. However, the hearing will not be held before the appellant's written documentation is received where the appellant has requested to submit the written documentation. The appellant may retain legal counsel or may be represented by another person.

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- (e) Within five (5) working days after receiving the written documentation, and where a hearing was not requested in the appeal letter, the administrative review official, based on a full review of the administrative record, will inform the appellant, by certified mail, return receipt requested of the official's determination.
 - (f) Within five (5) working days after the hearing has been held, when a hearing was requested in the appeal letter, the hearing official, based on a full review of the administrative record, will inform the appellant, by certified mail, return receipt requested of the official's determination.
 - (g) 7 C.F.R. § 225.13(11) requires the Program's administrative action to remain in effect during the appeal process.
 - (h) Participating sponsors and sites may continue to operate during an appeal of a termination.
 - (i) Reimbursement shall be paid for meals served during the appeal process if the administrative review determination overturns the Program's administrative action that was appealed.
 - (j) If the sponsor or site has been terminated for the reason of imminent dangers to the health or welfare of children, the operation shall not be allowed to continue during the appeal process and this reason shall be specified in the notice of action.
 - (k) The determination made by the hearing official is the final administrative determination provided under 7 C.F.R. § 225.13(12), will become the Final Order and will set forth the time limits for seeking judicial review.
- (9) 7 C.F.R. § 226.6(k)(5) governs appeals described in 7 C.F.R. § 226.6(k)(2) in the Child and Adult Care Food Program that are subject to administrative review by the state agency and the maximum time limit for processing appeals is sixty (60) days for the Child and Adult Care Food Program as follows:
- (a) 7 C.F.R. § 226.6(k)(9) makes provision for abbreviated administrative reviews, as specified in § 226.6(k)(9), to review written submissions concerning the accuracy of the Child and Adult Care Food Program's determination, if an application was denied, or the Program proposed to terminate an institution's agreement, because of the circumstances described in 7 C.F.R. § 226.6(k)(9)(i) through (iv).
 - (b) The time period to file an appeal to request an administrative review of an action described in 7 C.F.R. § 226.6(k)(2) that is subject to administrative review by the state agency is fifteen (15) days after the notice of the action to be taken or action proposed, sent by certified mail return receipt, is received. The appeal request for administrative review must be in writing.
 - (c) The receipt of the appeal requesting an administrative review must be acknowledged by the Department within ten (10) days of receiving the request. The appellant may retain legal counsel or may be represented by another person.
 - (d) The appellant is allowed to inspect information on which the action was based. The information must be available for inspection from the date the appeal request is received.

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- (e) The appellant may refute the findings contained in the notice of action in person, or by submitting written documentation to the administrative review official. In order to be considered, written documentation must be submitted to the administrative review official not later than thirty (30) days after receipt of the notice of action. If the written request for administrative review does not specifically request a hearing, a review of written information in lieu of a hearing will occur.
 - (f) At least ten (10) days advance notice of the hearing shall be given, if the appellant requested a hearing in the written appeal. The service of the advance notice of the hearing will be in accordance with State Rule 1240-5-4-.01.
 - (g) The determination of the administrative review official must be based solely on the information provided by the Department, the appellant, Federal and State laws, regulations, policies, and procedures governing the Child and Adult Care Food Program.
 - (h) The administrative review official must inform the appellant of the administrative review's outcome within sixty (60) days of the receipt of the appeal requesting administrative review. This sixty (60) day time frame is an administrative requirement and may not be used as a basis for overturning the action, if the administrative decision is not made within this time frame.
 - (i) 7 C.F.R. § 226.6(k)(10) requires the Child and Adult Care Food Program's action to remain in effect during the administrative review. 7 C.F.R. § 226.6(k)(10)(i) through (iii) describes actions of the Department that are permitted or prohibited during the pendency of the administrative review.
 - (j) The determination made by the administrative review official is the final administrative determination provided under 7 C.F.R. § 226.6(k)(5)(x) and will become a Final Order and set forth the time limits for seeking judicial review.
- (10) The maximum time limit for processing appeals is ninety (90) days for the Child Support Program, unless otherwise specified by the Tennessee Code Annotated or by rule in Chapter 1240-2.
 - (11) The maximum time for processing license probation appeals for child care agencies pursuant to T.C.A. § 71-3-509(b)(2) and (3) is seven (7) business days following conclusion of the hearing.
 - (12) The maximum time for rendering a decision regarding the Department's assessment of a child care agency program under the provisions of Chapter 1240-4-7 is thirty (30) days following the conclusion of the hearing.
 - (13) The maximum time for processing license probation appeals for adult day care centers pursuant to T.C.A. § 71-2-409(2) and (3) is fifteen (15) days following the receipt of the appeal.
 - (14) Hearings on the denial, revocation or restriction of an adult day care center license shall be held within sixty (60) days of the receipt of the petition requesting an appeal of the licensing action by the Department.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 71-1-105(12), 71-1-111 and 71-4-508; 20 U.S.C. §§ 107d-1 and 107b(6); 29 U.S.C. § 722(c); 42 U.S.C. §§ 1396 et seq. and 42 U.S.C. § 1396a(a)(5); 42 U.S.C. § 1761 and 1766; 7 C.F.R. §§ 225.13 and 226.6; 7 C.F.R. § 225.13(12) and 7 C.F.R. § 226.6(k)(5)(x); 7 C.F.R. § 273.15(c); 34 C.F.R. § 361.57(b)(1)(i), (e)(1) and (e)(3)(ii), and (g); 34 C.F.R. §§ 395.4 and 395.13; 42 C.F.R. §§ 431.10 and 431.244; 45 C.F.R. § 400.54 and 205.10(a)(16).

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1240-5-8-.02 Initial and Final Orders.

- (1) The provisions of this subchapter shall apply to the Initial and Final Order, except Vocational Rehabilitation Services appeals which are governed under State Rule 1240-5-1-.05(9)(e) and (10) and Summer Food Service Program and Child and Adult Care Food Program appeals which are governed under State Rules 1240-5-8-.01(8) and 1240-5-8-.01(9).
- (2) The hearing official shall render an Initial Order. The Initial Order shall automatically become the Final Order fifteen (15) days after it is issued unless a timely Petition for Appeal, Petition for Reconsideration or Petition for a Stay of Effectiveness is filed with the Appeals and Hearings Division or the Administrative Procedures Division, as applicable. The Final Order shall be binding upon all parties unless it is stayed, reversed or otherwise set aside through judicial review.
- (3) Contents of the Order.
 - (a) An Initial Order or a Final Order, shall include conclusions of law, the policy reasons for the decision, and findings of fact for all aspects of the order, including the remedy prescribed and, if applicable, the action taken on a petition for stay of effectiveness.
 - (b) Findings of fact, if set forth in language that is no more than mere repetition or paraphrase of the relevant provision of law, shall be accompanied by a concise and explicit statement of the underlying facts of record to support the findings.
 - (c) The Initial Order or Final Order must also include a statement of the available procedures and time limits for seeking reconsideration or other administrative relief of the initial or final orders and the time limits for seeking judicial review of the Final Order.
 - (d) An Initial Order or decision shall include a statement of any circumstances under which the Initial Order or decision may, without further notice, become a Final Order.
 - (e) Findings of fact shall be based exclusively upon the evidence of record in the adjudicative proceeding and on matters officially noticed in that proceeding.
- (4) If an individual serving or designated to serve as a hearing official becomes unavailable, for any reason, before rendition of the Final Order or Initial Order or decision, a substitute shall be appointed as provided in T.C.A. § 4-5-302. The substitute shall use any existing record and may conduct any further proceedings as are appropriate in the interest of justice.
- (5) The hearing official may allow the parties a designated amount of time after conclusion of the hearing for the submission of proposed findings.
- (6) Unless such period is required to be otherwise for compliance with applicable Federal regulations as specified in Tennessee Department of Human Services, State Rule 1240-5-8-.01, or unless such period is waived or extended with the written consent of all parties, or for good cause shown, or unless any State or Federal law or regulation requires that the order be entered in a shorter period, an Initial order or Final Order rendered pursuant to paragraph (2) shall be rendered in writing within ninety (90) days after conclusion of the hearing or after submission of proposed findings in accordance with paragraph (5).
- (7) The hearing official shall send copies of the Initial and Final Order to each party.
- (8) Rule 1240-5-1-.05 sets forth the process for final orders in Vocational Rehabilitation Services appeals.

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Authority: T.C.A. §§ 4-5-202, 4-5-302, 4-5-314, 4-5-315, 4-5-318, 71-1-105(12) and 71-1-111; 29 U.S.C. § 722(c); and 34 C.F.R. § 361.57(e)(4) and (g).

1240-5-8-.03 PUBLIC ACCESS TO FINAL ORDERS.

- (1) The record of the hearing and the Final Order will remain on file in the Appeals and Hearings Division State Office for any further inspection as may be needed by the parties or their representatives.
- (2) Hearing decisions are accessible to the public for inspection and copying, subject to the requirements of safeguarding information which is confidential under any provision of law or regulations. Those portions of any record that contain confidential information may be deleted prior to providing access to the final order.
- (3) The hearing record as specified in State Rule 1240-5-7-.01 shall be maintained for, not less than three (3) years.

Authority: T.C.A. §§ 4-5-202, 4-5-218(a)-(d), 4-5-319, 71-1-105(12) and 71-1-111; 7 C.F.R. § 273.15(q)(1) and (5); 42 C.F.R. § 431.244(g) and 45 C.F.R. § 205.10(a)(14) and (19).

1240-5-8-.04 REINSTATEMENT OF ASSISTANCE OR SERVICES.

- (1) If the Final Order is in favor of the appellant and retroactive benefits are in order, authorization will be given for retroactive benefits to be made in specific amounts and for specific months as provided for by program rules or state or federal regulations. The retroactive benefits will in no instance be authorized for any month prior to the month of incorrect action.
- (2) Any benefits which are reinstated shall be done so at the benefit level in effect during the time it was determined by the Final Order that the appellant was eligible.

Authority: T.C.A. §§ 4-5-202, 4-5-301, 71-1-105(12) and 71-1-111; 45 C.F.R. § 205.10(a)(4)(ii)(K) and (a)(18).

1240-5-8-.05 RECOVERY OF ASSISTANCE.

- (1) When the Final Order upholds the local office, any benefits due to continuation of assistance or services pending the hearing decision will be subject to recovery according to the procedures of the Department or as otherwise provided by law or regulation for recovering benefits except as provided in paragraph (2).
- (2) Vocational Rehabilitation services are subject to recovery where services were obtained through misrepresentation, fraud, collusion or criminal conduct on the part of the individual or his/her representative as provided in 1240-5-1-.05(5)(a).

Authority: T.C.A. §§ 4-5-202, 4-5-317, 71-1-105(12) and 71-1-111; 29 U.S.C. § 722(c)(7); 7 C.F.R. § 273.15(s)(2); 34 C.F.R. § 361.57(b)(4)(i); 42 C.F.R. § 431.230(b); 42 C.F.R. § 431.231(b); 45 C.F.R. § 400.54 and 45 C.F.R. § 205.10(a)(6)(i).

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CHAPTER 1240-5-9 RECONSIDERATION

AMENDMENTS

Chapter 1240-5-9, "Reconsideration", is amended by deleting the Chapter in its entirety and by renaming the Chapter "Reconsideration and Appeal of Orders", and by substituting the following language, so that, as amended, Chapter 1240-5-9 shall read as follows:

CHAPTER 1240-5-9 RECONSIDERATION AND APPEAL OF ORDERS

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1240-5-9-.01	Notice of Right to a Petition for Reconsideration and/or Appeal of the Initial Order.
1240-5-9-.02	Notice of Right to a Petition for Reconsideration of a Final Order.
1240-5-9-.03	Effect of Filing of Petition for Reconsideration of the Final Order.
1240-5-9-.04	Reconsideration of Initial/Final Order.
1240-5-9-.05	Administrative Recourse When Aggrieved By Final Order Affecting Vocational Rehabilitation Services under Individual Plans of Employment

1240-5-9-.01 NOTICE OF RIGHT TO A PETITION FOR RECONSIDERATION AND / OR APPEAL OF THE INITIAL ORDER.

- (1) Except in Vocational Rehabilitation Services appeals which are governed under State Rule 1240-5-1-.05(9)(e) and (10); Child and Adult Care Food Program appeals which are governed under State Rule 1240-5-8-.01(9); and Summer Food Service Program appeals which are governed under State Rule 1240-5-8-.01(8), written notice of the right to Petition for Reconsideration and/or Appeal shall accompany the Initial Order mailed to the parties.
- (2) A party may, under T.C.A. § 4-5-316, submit to the Appeals and Hearings Division, or to the Administrative Procedures Division if a hearing official in the Department of State conducted the contested case proceeding, a Petition for Stay of Effectiveness of an Initial Order or Final Order within seven (7) days after its entry, unless otherwise provided by statute or stated in the Initial or Final Order. The Appeals and Hearings Division, or the Administrative Procedures Division as applicable, may take action on the Petition for Stay, either before or after the effective date of the Initial or Final Order.
- (3) A Petition for Appeal from an Initial Order must be filed with the Administrative Procedures Division if the hearing official with the Department of State conducted the contested case proceeding, or if the hearing was conducted by a hearing officer from the Department of Human Services, then the appeal must be filed with the Appeals and Hearings Division of the Department within fifteen (15) days after entry of an Initial Order.
 - (a) Pursuant to T.C.A. § 4-5-315(c), the Petition for Appeal shall state its basis.
 - (b) Pursuant to T.C.A. § 4-5-315(e), the parties shall be permitted an opportunity to file briefs, and the Department may afford each party an opportunity to present oral argument.
 - (c) Pursuant to T.C.A. § 4-5-315(f), (g), (h) and (i):

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1. The Appeals and Hearings Division may cause a transcript to be prepared at the Department's expense, of such portions of the proceeding under review as the Appeals and Hearings Division considers necessary.
 2. The Appeals and Hearings Division may render a Final Order disposing of the proceeding or may remand the matter for further proceedings with instructions to the person who rendered the Initial Order. Upon remanding a matter, the Appeals and Hearings Division may order such temporary relief as is authorized and appropriate.
 3. A Final Order or an order remanding the matter for further proceedings pursuant to this subparagraph (c) shall be rendered and entered in writing within sixty (60) days after receipt of briefs and oral argument, unless that period is waived or extended with the written consent of all parties or for good cause shown.
 4. A Final Order or an Order remanding the matter for further proceedings under this subparagraph (c), shall identify any difference between such order and the Initial Order, and shall include, or incorporate by express reference to the Initial Order, all matters required by T.C.A. § 4-5-314(c).
- (4) Also, within fifteen (15) days after entry of an Initial Order, any party may file a Petition for Reconsideration with the hearing official stating the specific grounds upon which relief is requested.
- (5) If an Initial Order is subject to both a timely Petition for Reconsideration and to a Petition for Appeal, the Petition for Reconsideration shall be disposed of first; and a new fifteen (15) day period shall start to run upon disposition of the Petition for Reconsideration.

Authority: T.C.A. §§ 4-5-202, 4-5-315, 4-5-317, 71-1-105(12) and 71-1-111.

1240-5-9-.02 NOTICE OF RIGHT TO A PETITION FOR RECONSIDERATION OF A FINAL ORDER.

- (1) Except in Vocational Rehabilitation Services appeals, which are governed under State Rule 1240-5-1-.05(9)(e) and (10); Child and Adult Care Food Program appeals, which are governed under State Rule 1240-5-8-.01(9); and Summer Food Service Program appeals, which are governed under State Rule 1240-5-8-.01(8), if a separate Final Order is entered following the entry of an Initial Order, written notice of the right to petition for reconsideration of the Final Order is to accompany the Final Order to the parties.
- (2) Within fifteen (15) days following the date of the Final Order, any party aggrieved by a Final Order, may file a written Petition for Reconsideration which shall specify in detail the reasons for the request.

Authority: T.C.A. §§ 4-5-202, 4-5-317, 71-1-105(12) and 71-1-111.

1240-5-9-.03 EFFECT OF FILING OF PETITION FOR RECONSIDERATION OF THE FINAL ORDER.

- (1) The filing of a Petition for Reconsideration of the Final Order shall not supersede or delay the effective date of the Final Order.

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- (2) The Final Order shall take effect on the date entered by the Department and shall continue in effect until the Petition for Reconsideration shall be granted or until the Final Order is stayed, superseded, modified, or set aside in a manner provided by law.
 - (a) A party may, under T.C.A. § 4-5-316, submit to the Appeals and Hearings Division, or to the Administrative Procedures Division if a hearing official in the Department of State conducted the contested case proceeding, a Petition for Stay of Effectiveness of an Initial Order or Final Order within seven (7) days after its entry, unless otherwise provided by statute or stated in the Initial or Final Order. The Appeals and Hearings Division, or the Administrative Procedures Division as applicable, may take action on the Petition for Stay, either before or after the effective date of the Initial or Final Order.
- (3) If a change affecting the recipient's benefits/services occurs while the reconsideration is pending, action to implement that change will not be delayed pending the decision concerning reconsideration of the Final Order.

Authority: T.C.A. §§ 4-5-202, 4-5-316, 4-5-318, 71-1-105(12) and 71-1-111; 7 C.F.R. § 273.15(k)(2)(iii); and 45 C.F.R. § 205.10(a)(6)(i)(B).

1240-5-9-.04 RECONSIDERATION OF INITIAL/FINAL ORDER.

- (1) Within twenty (20) days of receiving the Petition for Reconsideration of the Initial or Final Order, the hearing official or the Commissioner or his/her designated representative, who rendered the Initial or Final Order, which is the subject of the Petition for Reconsideration, shall, enter a written order either:
 - (a) Denying the petition, as provided in T.C.A. § 4-5-317(c);
 - (b) Granting the petition and setting the matter for further proceedings, as provided in T.C.A. § 4-5-317(c); or
 - (c) Granting the petition and issuing a new Initial or Final Order, as provided in T.C.A. § 4-5-317(c).
 - (d) If no action has been taken on the Petition for Reconsideration within twenty (20) days, the petition shall be deemed to have been denied at the expiration of the twenty (20) day period, as provided in T.C.A. § 4-5-317(c).
- (2) As provided in T.C.A. § 4-5-317(d), an order granting the petition and setting the matter for further proceedings shall state the extent and scope of the proceedings which shall be limited to argument upon the existing record; and no new evidence shall be introduced, unless the party proposing such evidence shows good cause for his/her failure to introduce the evidence in the original proceeding.

Authority: T.C.A. §§ 4-5-202, 4-5-317, 71-1-105(12) and 71-1-111.

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1240-5-9-.05 ADMINISTRATIVE RECOURSE WHEN AGGRIEVED BY FINAL ORDER AFFECTING VOCATIONAL REHABILITATION SERVICES UNDER INDIVIDUAL PLANS OF EMPLOYMENT.

When an individual being provided Vocational Rehabilitation Services under an Individualized Plan of Employment (IPE) is dissatisfied with the Impartial Hearing Official's decision resulting from the Fair Hearing as set forth in Tennessee State Rule 1240-5-1-.05(9), the individual may request review as provided in Rule 1240-5-1-.05(9) and (10).

Authority: *T.C.A. §§ 4-5-202 and 71-1-105(12); 29 U.S.C. § 722(c); 34 C.F.R. § 361.48 and 34 C.F.R. § 361.57(e)(4) and (g).*

CHAPTER 1240-5-10 JUDICIAL REVIEW

AMENDMENTS

Chapter 1240-5-10, "Judicial Review", is amended by deleting the Chapter in its entirety and by substituting instead, the following language, so that, as amended, the Chapter shall read as follows:

CHAPTER 1240-5-10 JUDICIAL REVIEW

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1240-5-10-.01	Notice of Right to Judicial Review of the Final Order.
1240-5-10-.02	Method for Filing.
1240-5-10-.03	Clerical Mistakes.

1240-5-10-.01 NOTICE OF RIGHT TO JUDICIAL REVIEW OF THE FINAL ORDER.

Written notice of the right to seek judicial review of the Final Order and the time within which to file a Petition for Judicial Review of the Final Order shall be contained in the Initial and Final Order sent to the appellant or other party affected by adverse administrative action of the Department.

Authority: *T.C.A. §§ 4-5-202, 4-5-314, 4-5-322 and 71-1-105(12).*

1240-5-10-.02 METHOD FOR FILING.

- (1) Proceedings for review are instituted by filing a Petition for Review in a Chancery Court of Tennessee having jurisdiction within sixty (60) days after the Final Order is entered by the hearing official or by the Commissioner or his/her designated representative. Except as provided in paragraph (2), the provisions of T.C.A. § 4-5-322 are applicable to judicial review proceedings.
- (2) Judicial Review of Child Support Administrative Decisions.
 - (a) Except as provided in subparagraph (b), the judicial review of the administrative hearing decisions of child support cases heard by the Department of Human Services under T.C.A. § 36-5-1003 shall be conducted by the court having jurisdiction of the support

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order provided by T.C.A. § 4-5-322, not by the court in which the petitioner resides or the Chancery Court of Davidson County, Tennessee as applicable to petitions for judicial review in contested cases involving other programs administered by the Department of Human Services.

- (b) Venue for Petitions for Judicial Review in Child Support Cases When No Previous Support Order Exists or an Out-of-State Order is Being Enforced by the Department of Human Services.
 - 1. If any administrative action of the Department involving the Title IV-D child support program is not based upon an existing order of support or paternity, the party seeking judicial review shall file the Petition for Review of the Department's actions in the chancery court of the county of the person's residence, or the county where an entity was served with an administrative subpoena or was notified of a request for information.
 - 2. If the Department is enforcing any order of a Title IV-D agency of any other state and there has been no assumption of jurisdiction of the support order by a Tennessee court, the Petition for Judicial Review shall be filed in the county of the residence of the person in Tennessee against whom the request, administrative order or administrative subpoena is issued or the county where an entity was served with an administrative order, administrative subpoena or was notified of a request for information.
- (c) No judicial review may result in the forgiveness of any child or spousal support arrearages.
- (d) The scope of judicial review of an administrative decision involving the child support program shall be limited to the review of the record of the Department's hearing as otherwise provided in T.C.A. § 4-5-322 for all other cases involving judicial review of agency administrative actions under the Uniform Administrative Procedures Act.

Authority: T.C.A. §§ 4-5-202, 4-5-322, 36-5-1003, 71-1-105(12) and 71-1-111.

1240-5-10-.03 CLERICAL MISTAKES.

- (1) Prior to any appeal being perfected by either party to Chancery Court or to such other court with jurisdiction to conduct a judicial review, clerical mistakes in orders or other parts of the record, and errors therein arising from oversight or omissions may be corrected by the hearing official at any time on the initiative of either the hearing official or on motion of any party and after such notice, if any, as the hearing official may require.
- (2) The entry of a corrected order will not affect the dates of the original appeal time period.

Authority: T.C.A. §§ 4-5-202, 4-5-219 and 71-1-105(12).

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CHAPTER 1240-5-12 ADOPTION OF RULES

AMENDMENTS

Chapter 1240-5-12, "Adoption of Rules", is amended by deleting the Chapter in its entirety and by substituting instead, the following language, so that, as amended, the Chapter shall read as follows:

CHAPTER 1240-5-12 ADOPTION OF RULES

TABLE OF CONTENTS

1240-5-12-.01	Proposal of Rules.
1240-5-12-.02	Legal Authorization for Rules and Procedure for Rulemaking.
1240-5-12-.03	Public Access to Rules and Regulations.
1240-5-12-.04	Petition For Rules.

1240-5-12-.01 PROPOSAL OF RULES.

- (1) The Department shall adopt such rules as it deems necessary to secure satisfactory compliance with the provisions of any state or federal statutes, regulations or waivers for any programs that are within the responsibilities, authority and duties of the Department of Human Services.
- (2) The Commissioner shall cause to be prepared a notice of the proposal of such rules, or of any amendments or repeals of existing rules which shall be published as required by law; provided, public necessity or emergency rules that may be authorized by law shall not require publication of the notice prior to their implementation upon approval by the Attorney General and Reporter, but such rules shall comply with all other notice and hearing provisions that may be necessary to make those rules permanent that are required by law subsequent to the implementation of the public necessity or emergency rules. .

Authority: *T.C.A. §§ 4-5-202, 4-5-207 and 71-1-105(12).*

1240-5-12-.02 LEGAL AUTHORIZATION FOR RULES AND PROCEDURE FOR RULEMAKING.

The Department of Human Services' rules will be promulgated in accordance with the requirement of Title 4, Chapter 5 of the Tennessee Code Annotated, the provisions of state or federal laws, regulations or waivers governing the operation of the Department's programs and the rules of the Secretary of State's Administrative Procedures Division regarding the procedures for promulgating regulations for agencies of the State of Tennessee.

Authority: *T.C.A. §§ 4-5-202 and 71-1-105(12).*

1240-5-12-.03 PUBLIC ACCESS TO RULES AND REGULATIONS.

- (1) The Department shall keep at its principal office, or publish on its website, a complete and current set of rules and regulations of the Department and its rules shall constitute public records.

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- (2) It shall be the duty of the Department to keep a supply of copies of its rules and to furnish printed copies of such rules upon the request of any interested persons. The Department may charge a reasonable fee for providing copies as provided in T.C.A. § 4-5-218 and Tennessee Department of Human Services Rules, Chapter 1240-9-1.

Authority: T.C.A. §§ 4-5-202, 4-5-218 and 71-1-105(12).

1240-5-12-.04 PETITION FOR RULES.

Except where the right to petition for a rule is restricted by statute to a designated group or except where the form or procedure for such petition is otherwise prescribed by statute, any municipality, corporation or any five (5) or more persons having an interest in a rule may petition the Department of Human Services requesting the adoption, amendment or repeal of such rule. The petition shall follow the requirements of T.C.A. § 4-5-201.

Authority: T.C.A. §§ 4-5-201 and 71-1-105(12).

CHAPTER 1240-5-14 INTENTIONAL PROGRAM VIOLATIONS

AMENDMENTS

Rule 1240-5-14-.06, Court Imposed Disqualifications, is amended to replace the obsolete section of the Tennessee Code Annotated contained in the Authority section for the rule with the new section of the Tennessee Code Annotated, so that as amended, the Authority for the rule shall read:

Authority: T.C.A. §§ 4-5-202, 71-1-105(12), 71-5-314 and 7 C.F.R. § 273.16 (f) and (g).

CHAPTER 1240-5-15 AFDC ADMINISTRATIVE DISQUALIFICATION HEARINGS

AMENDMENTS

Chapter 1240-5-15 is amended to insert the word “Families First” in the title, in the place of “AFDC”, so that as amended, Chapter 1240-5-15 shall read as follows:

CHAPTER 1240-5-15 FAMILIES FIRST ADMINISTRATIVE DISQUALIFICATION HEARINGS

Authority: T.C.A. §§ 4-5-202, 71-1-105(12), 71-3-120 and 71-3-151–71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110.

Rule 1240-5-15-.01, Disqualification Hearings For Intentional Program Violations, is amended by deleting the rule in its entirety and by substituting instead the following language, so that, as amended, Rule 1240-5-15-.01 paragraph (1) through (3) shall read as follows:

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1240-5-15-.01 DISQUALIFICATION HEARINGS FOR INTENTIONAL PROGRAM VIOLATIONS.

- (1) The Department shall conduct administrative disqualification hearings for individuals accused of intentional program violations in accordance with the requirements outlined in this Chapter.
- (2) An Administrative Disqualification Hearing shall be initiated by the Department in cases in which the Department has sufficient evidence to substantiate that an individual has committed one or more acts of intentional program violation as defined by Rule 1240-1-53-.01.
- (3) The Department may initiate an Administrative Disqualification Hearing regardless of the current eligibility of the individual.

Authority: *T.C.A. §§ 4-5-202, 71-1-105(12), 71-3-120 and 71-3-151 – 71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110.*

Rule 1240-5-15-.02, Advance Notice of Hearing, is amended to replace the obsolete Authority section under the Rule, so that as amended, the Authority section under Rule 1240-5-15-.02 shall read as follows:

Authority: *T.C.A. §§ 4-5-202, 71-1-105(12); 71-3-120 and 71-3-151–71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110.*

Rule 1240-5-15-.03, Disqualification Hearings Procedures, is amended to replace the obsolete Authority section under the Rule, so that as amended, the Authority section under Rule 1240-5-15-.03 shall read:

Authority: *T.C.A. §§ 4-5-202, 71-1-105(12); 71-3-120 and 71-3-151 - 71-3-165; 42 U.S.C. § 616; and 45 C.F.R. § 235.110.*

CHAPTER 1240-5-16 CODE OF CONDUCT

AMENDMENTS

State Rule 1240-5 is amended by adding a new Chapter 1240-5-16, “Code of Conduct”, so that, as amended, the Chapter shall read as follows:

CHAPTER 1240-5-16 CODE OF CONDUCT

1240-5-16-.01. CODE OF JUDICIAL CONDUCT. Unless otherwise provided by law or clearly inapplicable in context, the Tennessee Code of Judicial Conduct, Rule 10, Canons 1 through 4, of the Rules of the Tennessee Supreme Court, and any subsequent amendments thereto, shall apply to all hearing officials of the State of Tennessee. However, any complaints regarding any individual hearing official's conduct under the code shall be made to the chief hearing official or other comparable entity with supervisory authority over the hearing official, and any complaints about the chief hearing official shall be made to the appointing authority.

Authority: *T.C.A. §§ 4-5-202, 4-5-301, 4-5-321 and 71-1-105(12).*

RULEMAKING HEARINGS

The notice of rulemaking set out herein was properly filed in the Department of State on the 28th day of April, 2006. (04-40)

RULEMAKING HEARINGS

BOARD OF EXAMINERS IN PSYCHOLOGY - 1180

There will be a hearing before the Tennessee Board of Examiners in Psychology to consider the promulgation of amendments to rules and repeal of rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, and 63-11-104. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Tennessee B Room of the Cordell Hull Building located at 425 Fifth Avenue North, Nashville, TN at 2:30 p.m. (CDT) on the 21st day of June, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1180-1-.03, Fees, is amended by deleting subparagraph (2) (f) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (2) (f) shall read:

- (2) (f) Ethics and Jurisprudence Re-Examination Fee – A non-refundable fee to be paid when applying for initial licensure.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, and 63-11-209.

Rule 1180-1-.03, Fees, is amended by inserting the following language as new subparagraphs (1) (e) and (2) (g), and renumbering the remaining subparagraphs accordingly:

- (1) (e) Ethics and Jurisprudence Re-Examination \$100.00
- (2) (g) Ethics and Jurisprudence Re-Examination Fee – A non-refundable fee to be paid each time an applicant retakes the Board's Ethics and Jurisprudence Examination.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, and 63-11-209.

Rule 1180-1-.14, Board Meetings, Officers, Consultants, Records and Declaratory Orders, is amended by adding the following language as new paragraph (8):

- (8) Reconsiderations and Stays. The Board authorizes the member who chaired the Board for a contested case to be the agency member to make the decisions authorized pursuant to rule 1360-4-1-.18 regarding petitions for reconsiderations and stays in that case.

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Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-215, and 63-11-216.

Rule 1180-2-.04, Examinations, is amended by deleting subparagraphs (2) (a), (2) (b), (2) (d) and (5) (b) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (2) (a), (2) (b), (2) (d) and (5) (b) shall read:

- (2) (a) The Board shall mail a registration form to applicants for licensure who have paid all applicable fees required by Rule 1180-1-.03, and who have successfully completed all requirements for licensure except for successful completion of the ethics and jurisprudence examination.
- (2) (b) Upon receiving the registration form, the applicant shall contact the Board's administrative office and schedule a time to take the ethics and jurisprudence examination.
 - 1. The examination test site is the Board's administrative office.
 - 2. The applicant shall bring the registration form and photo identification to the examination.
 - 3. The examination shall be completed in two (2) hours or less.
- (2) (d) The Board shall provide copies of the applicable statutes, regulations, and the "Ethical Standards" for use during the examination. No other copies may be used during the examination. Information on how to acquire copies of the applicable statutes, regulations, and the "Ethical Standards" for study purposes is available upon request from the Board's administrative office.
- (5) (b) If the Board determines that the applicant has failed to successfully complete the ethics and jurisprudence examination, the applicant will be mailed another registration form.
 - 1. Upon receiving the registration form to retake the examination, the applicant shall contact the Board's administrative office and schedule a time and location to retake the ethics and jurisprudence examination.
 - 2. The applicant shall mail the registration form and the Ethics and Jurisprudence Re-Examination Fee, as provided in Rule 1180-1-.03, to the Board's administrative office.
 - 3. The examination test site is the Board's administrative office.
 - 4. The applicant shall bring photo identification to the examination.
 - 5. The examination shall be completed in two (2) hours or less.
 - 6. The applicant must continue to retake the examination until it has been successfully completed before the licensure application will be deemed complete and presented to the Board for consideration.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-208, 63-11-209, 63-11-210, and 63-11-211.

RULEMAKING HEARINGS

Rule 1180-3-.02, Qualifications for Licensure, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting the language of the rule in its entirety and substituting instead the following language, so that as amended, the new catchline, the new introductory language, and the new paragraphs (1) and (2) shall read:

1180-3-.02 Qualifications for Upgrade. To become licensed as a Senior Psychological Examiner, completion of one (1) of the following requirements is necessary:

- (1) Licensed as a Psychological Examiner prior to July 1, 1991, and rendering health-related clinical activities or services.
- (2) Licensed as a Psychological Examiner after June 30, 1991, and rendering health-related clinical activities or services; and
 - (a) Completion of five (5) years of applied experience from the date of original licensure or from the date of issuance of a temporary permit; and
 - (b) Completion of two hundred (200) hours of post-licensure continuing education, as provided in Rule 1180-1-.08, including documentation of completion of forty-five (45) Type I hours, forty-five (45) Type I or II hours, and a log of the one hundred-ten (110) Type I, II, or III hours. The log of Type I, II, or III continuing education should include type of activity, nature of the training, and number of hours assigned to specific activity.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-201, and 63-11-202.

Rule 1180-3-.03, Procedures for Licensure, is amended by deleting the catchline in its entirety and substituting instead the following language, and is further amended by deleting the language of the rule in its entirety and substituting instead the following language, so that as amended, the new catchline and the new paragraphs (1) and (2) shall read:

1180-3-.03 PROCEDURES FOR UPGRADE.

- (1) To become licensed as a Senior Psychological Examiner in Tennessee, a person who was licensed as a Psychological Examiner prior to July 1, 1991 must submit a written request for application to be licensed as a Senior Psychological Examiner.
 - (a) The written request and the subsequent application will be accepted throughout the year.
 - (b) When necessary, all required documents shall be translated into English and the translation and original document certified as to authenticity by the issuing source. Both versions must be submitted to the Board's administrative office.
- (2) To become licensed as a Senior Psychological Examiner in Tennessee, a person who was licensed as a Psychological Examiner after June 30, 1991 must comply with the following procedures and requirements:
 - (a) A Senior Psychological Examiner application form shall be requested from the Board's administrative office or downloaded from the Department of Health's website, and
 - (b) Applications will be accepted throughout the year, and

RULEMAKING HEARINGS

- (c) The applicant shall complete and have notarized, as part of the application, a Board-provided document attesting to the rendering of health-related clinical activities or services as a Psychological Examiner for five (5) years under supervision with names of the supervisor(s) provided; and
- (d) The applicant shall provide verification of completion of two hundred (200) hours of post-licensure continuing education, as provided in Rule 1180-3-.02 (2) (b); and
- (e) When necessary, all required documents shall be translated into English and the translation and original document certified as to authenticity by the issuing source. Both versions must be submitted to the Board's administrative office.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, 63-11-104, 63-11-201, and 63-11-202.*

REPEALS

Rule 1180-3-.04, Examinations, is repealed.

Rule 1180-3-.05, Temporary License, is repealed.

Authority: *T.C.A. §§ 4-5-202, 4-5-204, and 63-11-104.*

The notice of rulemaking set out herein was properly filed in the Department of State on the 21st day of April, 2006. (04-23)

RULEMAKING HEARINGS

BOARD OF VETERINARY MEDICAL EXAMINERS - 1730

There will be a hearing before the Tennessee Board of Veterinary Medical Examiners to consider the promulgation of amendments to rules pursuant to T.C.A. §§ 4-5-202, 4-5-204, 63-12-105 and 63-12-106. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Tennessee Room of the Cordell Hull Building located at 425 Fifth Ave. North, Nashville, TN at 3:30 p.m. (CDT) on the 23rd day of June, 2006.

Any individuals with disabilities who wish to participate in these proceedings (review these filings) should contact the Department of Health, Division of Health Related Boards to discuss any auxiliary aids or services needed to facilitate such participation or review. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date such party intends to review such filings), to allow time for the Division to determine how it may reasonably provide such aid or service. Initial contact may be made with the ADA Coordinator at the Division of Health Related Boards, First Floor, Cordell Hull Building, 425 Fifth Avenue North, Nashville, TN 37247-1010, (615) 532-4397.

For a copy of the entire text of this notice of rulemaking hearing contact:

Jerry Kosten, Regulations Manager, Division of Health Related Boards, 425 Fifth Avenue North, First Floor, Cordell Hull Building, Nashville, TN 37247-1010, (615) 532-4397.

SUBSTANCE OF PROPOSED RULES

AMENDMENTS

Rule 1730-3-.05, Procedures for Licensure, is amended by deleting subparagraphs (1) (c) and (1) (f) in their entirety and substituting instead the following language, so that as amended, the new subparagraphs (1) (c) and (1) (f) shall read:

- (1) (c) An applicant shall pay, at the time of application, the non-refundable application fee and state regulatory fee as provided in Rule 1730-3-.06.
- (1) (f) An applicant shall pass the examination as provided in Rule 1730-3-.08. Whenever the exam has been taken in another jurisdiction, official scores shall be submitted to the Board's administrative office directly from the testing service.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-12-114, 63-12-115, and 63-12-135.

Rule 1730-3-.06, Fees, is amended by deleting subparagraphs (1) (c) and (3) (c) in their entirety and re-numbering the remaining subparagraphs accordingly.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, and 63-12-135.

Rule 1730-3-.07, Application Review, Approval, Denial, Interviews, is amended by deleting subparagraph (3) (c) in its entirety and substituting instead the following language, so that as amended, the new subparagraph (3) (c) shall read:

- (3) (c) For an applicant who has not passed the examination as provided in Rule 1730-3-.08, the file will remain open until the applicant has had the opportunity to take the exam three (3) times. At that time, the file will be closed and the applicant notified.

RULEMAKING HEARINGS

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-12-114, 63-12-115, and 63-12-135.

Rule 1730-3-.08, Examinations, is amended by deleting the language of the rule in its entirety and substituting instead the following language as new paragraphs (1), (2), (3), (4), and (5):

- (1) Individuals seeking licensure by examination, as provided in Rules 1730-3-.04 and 1730-3-.05, shall be required to pass the Veterinary Technician National Examination. This examination is developed by the American Association of Veterinary State Boards.
- (2) The passing score shall be the criterion-referenced passing grade established by the testing agency.
- (3) All examination applications and fees for the Veterinary Technician National Examination shall be sent directly to the American Association of Veterinary State Boards.
- (4) Official examination scores shall be submitted to the Board's administrative office directly from the testing agency whenever the examination was taken outside the Board's jurisdiction.
- (5) The Board adopts the Veterinary Technician National Board Examination as its state and national examinations, pursuant to T.C.A. § 63-12-115.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-12-106, 63-12-114, 63-12-115, and 63-12-135.

The notice of rulemaking set out herein was properly filed in the Department of State on the 21st day of April, 2006. (04-24)

RULEMAKING HEARINGS

TENNESSEE WILDLIFE RESOURCES COMMISSION - 1660

There will be a hearing before the Tennessee Wildlife Resources Commission to consider the promulgation of rules, amendments of rules, or repeals of rules pursuant to Tennessee Code Annotated, Section 70-1-206. The hearing will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, Tennessee Code Annotated, Section 4-5-204 and will take place in the Region II Conference Room of the Tennessee Wildlife Resources Agency, Ray Bell Region II Building, 5105 Edmondson Pike, Nashville, Tennessee, at 9:00 a.m., local time, on the 22nd day of June, 2006.

Any individuals with disabilities who wish to participate in these proceedings (to review these filings) should contact the Tennessee Wildlife Resources Agency to discuss any auxiliary aids of services needed to facilitate such participation. Such initial contact may be made no less than ten (10) days prior to the scheduled meeting date (the date the party intends to review such filings), to allow time for the Tennessee Wildlife Resources Agency to determine how it may reasonably provide such aid or service. Initial contact may be made with the Tennessee Wildlife Resources Agency ADA Coordinator, Carolyn Wilson, Room 229, Tennessee Wildlife Resources Agency Building, Ellington Agricultural Center, Nashville, Tennessee 37204, telephone number (615)781-6594.

For a copy of this notice of rulemaking hearing, contact: Sheryl Holtam, Attorney, Tennessee Wildlife Resources Agency, P.O. Box 40747, Nashville, TN 37204, telephone number (615)781-6606.

SUBSTANCE OF PROPOSED RULES

AMENDMENT

CHAPTER 1660-2-4

RULES AND REGULATIONS GOVERNING REPORTING OF BOATING ACCIDENTS

Rule 1660-2-4-.01(1) Accident Report is amended by deleting paragraph (1) and by substituting a new paragraph (1) that shall read as follows:

- (1) The operator of a vessel shall immediately notify the Wildlife Resources Agency and, within the time period prescribed in Rule 1660-2-4-.01(2), submit the casualty or accident report when, as a result of an occurrence that involved the vessel or its equipment –

Rule 1660-2-4-.01(1)(b) Accident Report is amended by changing the monetary value of damage to the vessel or combination of vessels and other property damage totals from \$200 to \$500, so that as amended, the rule shall read as follows:

- (b) A person is injured and receives medical treatment beyond first aid; damage to the vessel or combination of vessels and other property damage totals more than \$500; or

Authority: T.C.A. §§69-9-209 and 70-1-206.

The notice of rulemaking set out herein was properly filed in the Department of State on the 25th day of April, 2006. (04-25)



CERTIFICATE OF APPROVAL

As provided by T.C.A., Title 4, Chapter 5, I hereby certify that to the best of my knowledge, this issue of the Tennessee Administrative Register contains all documents required to be published that were filed with the Department of State in the period beginning April 30, 2006 and ending April 28, 2006.

A handwritten signature in black ink, reading 'Riley C. Darnell'.

RILEY C. DARNELL
Secretary of State